

**HIGH COURT OF TRIPURA
AGARTALA
MAC App. No.4 of 2024**

The United India Insurance Co. Ltd.

Represented by its Divisional Manager,
Agartala Divisional Office, Old RMS Chowmuhani,
P.O.-Agartala, P.S.-West Agartala,
District- West Tripura.
(Insurer of vehicle no.TR-01-Y-7078(Achiever))

---- Appellant(s)

Versus

1. Sri Barendra Debbarma

S/O Sri Sukhdeb Debbarma,
Resident of Abhoynagar,
P.O.-Abhoynagar, P.S.-West Agartala,
Dist.-West Tripura

----Claimant-Respondent(s)

2. Sri Anjan Sutradhar

S/O Sri Sukhlal Sutradhar,
All are residents of Vill-Muhinipur,
P.O. & P.S.-Sidhai, District-West Tripura.
(Owner of TR-01-Y-7078(Achiever))

----Owner-Respondent(s)

along with

CO(FA) No.4 of 2025

Sri Barendra Debbarma

Son of Sri Sukhdeb Debbarma, aged about 59 years,
Resident of Abhoynagar, P.O.- Abhoynagar,
P.S.-East Agartala, Sub-Division-Agartala,
District- West Tripura.

---- Cross-objector

Versus

1. Sri Anjan Sutradhar,

Son of Sri Sukhlal Sutradhar,
Resident of Muhinipur,
P.O.+P.S. Sidhai,
District- West Tripura
(Owner of TR-01-Y-7078(Achiever))

2. The United India Insurance Co. Ltd.

Represented by its Divisional Manager,
Agartala Divisional Officer, Old RMS Chowmuhani,

P.O. Agartala, P.S. West Agartala, District-West Tripura
(Insurer of TR-01-Y-7078(Achiever))

----- Respondent(s)

In MAC App. No.4 of 2024

For Appellant(s) : Mr. Pradyumna Gautam, Adv.

For Respondent(s) : Mr. Sankar Lodh, Adv,

In CO(FA) No.5 of 2024

For Cross-objector(s) : Mr. Sankar Lodh, Adv.

For Respondent(s) : Mr. Pradyumna Gautam, Adv.

Date of hearing : 02.07.2025

Date of delivery of
Judgment & Order : 08.07.2025

Whether fit for
reporting : YES

HON'BLE MR. JUSTICE BISWAJIT PALIT

Judgment & Order

Both the appeal and the cross-objection are taken up together for hearing and decision as both the matters have arisen out of a common judgment and order dated 22.03.2023 delivered by Learned Member, MAC Tribunal No.5, West Tripura, Agartala in connection with TS(MAC)/20/2018. The appeal is filed by the appellant-Insurance Company under Section 173 of MV Act and the cross-objection is filed by the claimant under Order XLI Rule 22 of CPC read with Section 173 of M.V. Act.

2. Heard Learned Counsel Mr. Pradyumna Gautam appearing on behalf of the appellant-Insurance Company and also heard Learned Counsel Mr. Sankar Lodh appearing on behalf of the respondent-claimant-cum-cross-objector. None

appeared on behalf of the owner-cum-driver of the offending bike.

3. At the time of hearing, Learned Counsel for the appellant has drawn the attention of the Court that in this case the assessment of compensation by the Learned Tribunal below was not proper. Admittedly the appellant before the Learned Tribunal below could not produce any document showing his monthly income but the Learned Tribunal below without giving any specific finding/reasons determined the monthly income of the respondent-claimant-cum-cross-objector at Rs.15,000/- which was excessive in absence of any cogent evidence on record. Learned Counsel further submitted that the determination of disability by the Learned Tribunal below was also not proper and not in accordance with law and furthermore according to Learned Counsel, the prayer for adducing additional evidence cannot be entertained at this belated stage for which the appellant-Insurance Company has preferred this appeal and urged for setting aside the judgment and award delivered by Learned Tribunal below.

4. On the other hand, Learned Counsel Mr. S. Lodh appearing on behalf of the respondent-claimant-cum-cross-objector has drawn the attention of the Court submitting that there was no infirmity in the judgment delivered by Learned Tribunal. According to Learned Counsel even this High Court also by the notification dated 04.08.2023 has determined the monthly income of the persons of different categories and

considering the status of the respondent-claimant, Learned Tribunal below rightly determined the monthly income. Furthermore, due to the accident the respondent-claimant had to undergo several operations for which he sustained huge expenditures, so, there was no infirmity in the judgment of Learned Tribunal below.

It was further submitted by the Learned Counsel for the respondent-claimant-cum-cross-objector that after disposal of the petition, the applicant incurred further amount of Rs.3,53,802/- for the purpose of his treatment and those bills are required to be taken into evidence for proper adjudication and apart from that, medical bill amounting to Rs.21,260/- and lodging bill of Rs.7,250/- could not be placed on record as the bills were misplaced. So, the prayer of the respondent-claimant-cum-objector for allowing him to adduce additional evidence under Order XLI Rule 27 be allowed.

Learned Counsel Mr. Lodh further submitted that in view of the provision of Section 107 of CPC there is scope for allowing additional evidence and finally urged for dismissal of the appeal filed by the appellant-Insurance Company and also to allow the application filed under Order XLI Rule 27 of CPC for allowing the claimant to adduce additional evidence.

5. Here in the case at hand the respondent-claimant-cum-objector filed one claim petition before the Learned Tribunal below with the assertions that on 25.09.2016 at about 1700/1715 hours when the respondent-claimant-cum-objector

was coming from Khowai towards Agartala by riding his motor-cycle bearing No.TR-01-P-8434 and on the way when he reached near Rangachara that time from the opposite direction one bike bearing No.TR-01-Y-7078 (Achiever) being driven by one Anjan Sutradhar was proceeding towards Hezamara side from Agartala rashly and negligently suddenly dashed against the respondent-claimant at Rangachara resulting which the respondent-claimant-cum-cross-objector fell down on the road and sustained grievous injury on his right leg and just after the accident with the help of local people the respondent-claimant-cum-cross-objector was taken to GBP Hospital wherein he was treated therein as a indoor patient from 25.09.2016 to 29.09.2016. On 29.09.2016 the respondent-claimant-cum-cross-objector was referred to SSKM Hospital by the doctors of GBP Hospital for further better treatment and on 30.09.2016 the respondent-claimant-cum-cross-objector went to Kolkata for better treatment and took admission at Nightangle Hospital wherein he was treated there from 30.09.2016 to 25.10.2016 as an indoor patient and the treatment is still continuing. It was also submitted that on several occasions operation was done of the right leg of the respondent-claimant-cum-cross-objector since his right leg was broken into several pieces and due to accident the respondent-claimant-cum-cross-objector got grievous injury on his person and thus he lost his natural working capacity and it was further submitted that due to rash and negligent driving by the driver of the offending motor cycle

bearing No.TR-01-Y-7078, accident took place. In this regard, a police case was registered. Hence the respondent-claimant-cum-cross-objector filed the claim petition before the Tribunal.

The claim petition was contested by the appellant-Insurance Company and the OP No.1 being the rider of the offending bike. No written statement was filed by said OP No.1 but the appellant-Insurance Company as respondent contested the same by filing written statement denying the assertions of the respondent-claimant and submitted that the claim petition was subjected to strict proof by the claimant.

6. Upon the pleadings of the parties, Learned Tribunal below framed the following issues:

- i) Whether the case is maintainable?**
- ii) Whether claimant Barendra Debbarma sustained injury due to rash and negligent driving of Motor Cycle TR-01-Y-7078 (Achiever) on 25.09.2016 at about 5/5.15 pm near Ranger Chara under Sidhai PS?**
- iii) Whether there was any contributory negligence of claimant while riding his motor cycle TR-01-P-8934?**
- iv) Whether claimant is entitled to get compensation?**
- v) What should be the amount of just compensation?**
- vi) Who is liable to pay compensation?**

7. To substantiate the issues, the respondent-claimant-cum-cross-objector was examined as PW-1 and he adduced one witness who was examined as PW-2 and in support of his contention, the respondent-claimant relied upon some documents which were marked as Exhibits.

On the other hand, the rider of the offending bike was examined as OPW-1 and adduced certain documents which

were also marked as Exhibits. For convenience, the names of the witness as well as the exhibited documents are mentioned herein below:

Name of the witness of the claimant:

1. PW-1: Sri Barendra Debbarma
2. PW-2: Dr. D. B. Roy

Exhibits of the claimant:

1. Exbt.1: Certified copy of printed FIR.
2. Exbt.2: Certified copy of Suo Motu FIR.
3. Exbt.3: Certified copy of FIR.
4. Exbt.4: Computerized FIR.
5. Exbt.5: Certified copy of injury reports.
6. Exbt.6: Certified copy of charge sheet.
7. Exbt.7: Disability certificate.
8. Exbt.7/1: Signatures of PW2 in the disability certificate.
9. Exbt.7/2: Signature of Dr. Ishita Guha in the disability certificate.
- 10.Exbt.8 series: Bills, vouchers, money receipts, Air ticket, cash memos.
- 11.Exbt.9 series: Boarding pass.

Name of the witness of the opposite party No.1:

1. OPW-1: Sri Anjan Sutradhar

Exhibits of the Opposite Party No.1:

1. Exbt.A: Photocopy of registration certificate.
2. Exbt.B: Photocopy of Insurance Certificate.
3. Exbt.C: Photocopy of driving licence.
4. Exbt.D: Photocopy of Motor Vehicle Tax.

Finally, on conclusion of enquiry, the Learned Tribunal below allowed the claim petition. The operative portion of the judgment and award of the Learned Tribunal below runs as follows:

ORDER

"20. It is ordered that, a total amount of Rs.21,18,000/-(Rupees Twenty one Lakh eighteen thousand) is awarded in favour of the petitioner as compensation. The OP No.2, the The United India Insurance Company Limited, the insurer of the vehicle bearing registration TR-01-Y-7078 (Achiever) is hereby directed to pay the compensation as awarded. The OP No.2, is also directed to pay the interest @ 8% per annum on total awarded sum from the date of filing of this petition i.e. on 31.01.2018 till the date of realization. Sixty(60) percent of the awarded amount is to be fixed deposited for five years and rest amount of compensation is to be released in favour of the claimant in his bank account.

21. Thus, the claim petition is allowed on contest.

22. Let a copy of this award be supplied to the parties concerned on free of cost."

Challenging that judgment and award, the appellant-appellant-Insurance Company has preferred this appeal and at the same time, the claimant petitioner as objector has filed the cross-objection for enhancement of the amount of award and also prayed for permitting the respondent-claimant-cum-cross-objector to adduce additional evidence.

8. I have gone through the judgment/award delivered by the Learned Tribunal below very meticulously. It appears that in deciding the claim petition, the Learned Tribunal below relied upon the following citations:

- 1. Pappu Deo Yadav v. Naresh Kumar and Others reported in AIR 2020 SCC 4424.**
- 2. Govind Yadav v. New India Insurance Company Limited reported in (2011) 10 SCC 683**
- 3. Arvind Kumar Mishra v. New India Assurance Company Limited and Another reported in (2010) 10 SCC 254.**
- 4. Raj Kumar v. Ajay Kumar and Another reported in (2011) 1 SCC 343.**
- 5. National Insurance Company Limited v. Pranay Sethi and Others reported in (2017) 16 SCC 680(para 55).**
- 6. Helen C. Rebello(Mrs.) and Others v. Maharashtra State Road Transport Corporation and Another reported in (1999) 1 SCC 90(para 36).**
- 7. Jagdish v. Mohan and Others reported in (2018) 4 SCC 571.**
- 8. Parminder Singh v. New India Assurance Company Limited and Others reported in (2019) 7 SCC 217.**
- 9. K. Suresh v. New India Assurance Co. Ltd reported in (2012) 12 SCC 274.**
- 10. Kirti and Another v. Oriental Insurance Company Limited reported in (2021) 2 SCC 166.**
- 11. Sarla Verma and Ors. v. Delhi Transport Corporation and Anr. reported in 2009 AIR SCW 4992.**

On perusal of the judgment, it appears that in para 13.3 of the judgment Learned Tribunal below came to the finding that the monthly income of the respondent-claimant was Rs.15,000/- per month. But surprisingly, no reason was given by the Learned Tribunal below as to how the Learned Tribunal below assessed the monthly income of the respondent-claimant at Rs.15,000/-. Although the respondent-claimant took the plea that he is a Government servant but in this regard no certificate was adduced before the Learned Tribunal below and no monthly income certificate of the respondent-claimant was adduced by the respondent-claimant in support of his claim petition before the Tribunal. The purpose of the Claims Tribunal is to determine the "just and fair" compensation but in this case without assigning any specific reasons the Tribunal has determined the monthly income at Rs.15,000/- which in the considered opinion of this Court was not proper.

9. Further, regarding the issue of determination of disability, it appears that Learned Tribunal below relied upon the evidence of PW-2, Dr. D. B. Roy who identified the disability certificate who stated that on 19.06.2019 he along with Dr. Ishita Guha examined the respondent-claimant Barendra Debbarma and found that he was suffering from 60% locomotor disability on his right leg and identified the disability certificate which was marked as Exhibit-7.

During cross-examination, he stated that the said certificate was issued for a period of 5(five) years and after 5

years it can be said as to whether the disability was permanent or temporary. He could not say what will be the condition of the respondent-claimant after 19.06.2029.

10. However, relying upon the aforesaid citations, Learned Tribunal below assessed 100% permanent disability which was also not proper. In this regard, in **Raj Kumar**(supra) wherein in para No.8 to 20, Hon'ble the Supreme Court of India further observed as under:

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

9. 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%.

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

11. What requires to be assessed by the Tribunal is the effect of the 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 the 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 SCC 254 : (2010) 3 SCC (Cri) 1258 : (2010) 10 Scale 298] and *Yadava Kumar v. National Insurance Co. Ltd.* [(2010) 10 SCC

341 : (2010) 3 SCC (Cri) 1285 : (2010) 8 Scale 567])

12. 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.

13. 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 disability (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.

14. 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 per cent, 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 be 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.

15. 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.

16. The Tribunal should not be a silent spectator when medical evidence is tendered in regard to the injuries and their effect, in particular, the extent of permanent disability. Sections 168 and 169 of the Act make it evident that the Tribunal does not function as a neutral umpire as in a civil suit, but as an active explorer and seeker of truth who is required to "hold an enquiry into the claim" for determining the "just compensation". The Tribunal should therefore take an active role to ascertain the true and correct position so that it can assess the "just compensation". While dealing with personal injury cases, the Tribunal should preferably equip itself with a medical dictionary and a handbook for evaluation of permanent physical impairment (for example, Manual for Evaluation of Permanent Physical Impairment for Orthopaedic Surgeons, prepared by American Academy of Orthopaedic Surgeons or its Indian equivalent or other authorised texts) for understanding the medical evidence and assessing the physical and functional disability. The Tribunal may also keep in view the First Schedule to the Workmen's Compensation Act, 1923 which gives some indication about the extent of permanent disability in different types of injuries, in the case of workmen.

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

18. The Tribunal should also act with caution, if it proposed to accept the expert evidence of doctors who did not treat the injured but who give "ready to use" disability certificates, without proper medical assessment. There are several instances of unscrupulous doctors who without treating the injured, readily give 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 the 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 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 the percentage of loss of earning capacity is the same as the 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 to 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.

20. The assessment of loss of future earnings is explained below with reference to the following illustrations:

Illustration A.— The injured, a workman, was aged 30 years and earning Rs. 3000 per month at the time of accident. As per doctor's evidence, the permanent disability of the limb as a consequence of the injury was 60% and the consequential permanent disability to the person was quantified at 30%. The loss of earning capacity is however assessed by the Tribunal as 15% on the basis of evidence, because the claimant is continued in employment, but in a lower grade. Calculation of compensation will be as follows:

(a) Annual income before the accident	:	Rs. 36,000
(b) Loss of future earning per annum (15% of the prior annual income)	:	Rs. 5400
(c) Multiplier applicable with reference to age	:	17
(d) Loss of future earnings: (5400 × 17)	:	Rs. 91,800

Illustration B.— The injured was a driver aged 30 years, earning Rs. 3000 per month. His hand is amputated and his permanent disability is assessed at 60%. He was terminated from his job as he could no longer drive. His chances of getting any other employment was bleak and even if he got any job, the salary was likely to be a pittance. The Tribunal therefore assessed his loss of future earning capacity as 75%. Calculation of compensation will be as follows:

(a) Annual income prior to the accident	:	Rs. 36,000
(b) Loss of future earning per annum (75% of the prior annual income)	:	Rs. 27,000
(c) Multiplier applicable with reference to age	:	17
(d) Loss of future earnings: (27,000 × 17)	:	Rs. 4,59,000

Illustration C.— The injured was aged 25 years and a final year Engineering student. As a result of the accident, he was in coma for two months, his right hand was amputated and vision was affected. The permanent disablement was assessed as 70%. As the injured was incapacitated to pursue his chosen

career and as he required the assistance of a servant throughout his life, the loss of future earning capacity was also assessed as 70%. The calculation of compensation will be as follows:

- | | |
|---|--------------|
| (a) Minimum annual income he would have got if had been employed as an engineer : | Rs. 60,000 |
| (b) Loss of future earning per annum (70% of the expected annual income) : | Rs. 42,000 |
| (c) Multiplier applicable (25 years) : | 18 |
| (d) Loss of future earnings: (42,000 × 18) | Rs. 7,56,000 |

[Note.— The figures adopted in Illustrations (A) and (B) are hypothetical. The figures in Illustration (C) however are based on actuals taken from the decision in *Arvind Kumar Mishra* [(2010) 10 SCC 254 : (2010) 3 SCC (Cri) 1258 : (2010) 10 Scale 298] .]

From the aforesaid observation of the Hon'ble Apex Court it appears that Hon'ble the Supreme Court in deciding the case has given certain observation as to how the disability is to be ascertained which the Learned Tribunal below in my considered opinion has failed to appreciate properly at the time of delivery of judgment.

It is also to be noted here that the manner in which the Learned Tribunal determined the percentage of disability was not in accordance with the guidelines framed by the Hon'ble Apex Court in the aforenoted judgment which needs to be re-adjudicated for proper adjudication of the claim petition.

11. Furthermore, regarding adducing additional evidence let us see the relevant provision of Order XLI Rule 27 of CPC which provides as under:

27. Production of additional evidence in Appellate Court.-

(1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court. But if-

(a) the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or

(aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or

(b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause,

the Appellate Court may allow such evidence or document to be produced, or witness to be examined.

(2) Wherever additional evidence is allowed to be produced by an Appellate Court, the Court shall record the reason for its admission.

From the aforesaid provision, it appears that there is scope for permitting to adduce additional evidence under certain circumstances by the Appellate Court.

12. Admittedly, before the Learned Tribunal below the respondent-claimant could not adduce those documents which he intends to adduce at this stage as because the treatment was going on and furthermore some bills which ought to have been produced by the respondent-claimant before the Learned Tribunal at the time of enquiry but those documents could not produced before the Learned Tribunal because at the time of filing the claim petition he was still undergoing treatment. It is on record that any specific prescription could not be submitted by him along with the documents for which he has incurred the expenses but it appears that those documents were relating to his treatment to Orthopaedics department and the separate

medical bills amounting to Rs.21,260/- and the lodging bills amounting to Rs.7,250/- could not be produced according to the respondent-claimant as those bills were misplaced and all the bills have been submitted as Annexure-1 with the application petition. After hearing both the sides and also after going through the judgment and award of the Learned Tribunal below it appears that at the time of determination of monthly income of any petitioner, the Learned Tribunal should give specific reasons as to how the Learned Tribunal has determined the monthly income of any person in any given case like that, which in this case appears to be absent/missing.

13. Furthermore, regarding disability also, the Learned Tribunal could not give any specific findings as to how the Learned Tribunal below determined 100% disability of the respondent-claimant as such the matter requires to be remanded back to the Learned Tribunal below to determine the following factors before delivery of fresh judgment:

- i) To assess the monthly income of the respondent-claimant with specific reasons as the respondent-claimant could not prove/submit any salary certificate or any other documentary evidence in support of his monthly income.
- ii) To give specific finding regarding determination of disability of the respondent-claimant, etc. in

the light of aforesaid observation of Hon'ble Supreme Court in **Raj Kumar(supra)**.

Furthermore, since the respondent-claimant before the Learned Tribunal could not adduce the additional evidences which the respondent-claimant has submitted before this Court so those documents are also required to be exhibited before the Learned Tribunal and accordingly the matter requires to be remanded back to the Learned Tribunal below for fresh adjudication.

14. In the result, the appeal filed by the appellant-Insurance Company is allowed. The judgment and award dated 22.03.2023 delivered by Learned MAC Tribunal No.5, West Tripura, Agartala is hereby set aside. The matter is remanded back to the Tribunal below to decide the aforesaid points afresh after permitting the parties to adduce fresh evidence on record in this regard and furthermore, the respondent-claimant is also permitted to adduce additional evidence before the Learned Tribunal below for marking exhibits so as to arrive at a specific finding in this regard. The cross-objection filed by the respondent-claimant is also accordingly allowed. The Learned Tribunal shall after receipt of the record fix a date for adducing evidence/additional evidence by the respondent-claimant and if necessary be allow to cross-examine the opposite parties regarding additional evidence and thereafter shall deliver a fresh judgment with specific assertions regarding disability

within a period of 4(four) months after receipt of the record covering all aspects as mentioned in the judgment.

With this observation, this present appeal and the cross-objection stands disposed of and the application for adducing additional evidence also stands disposed of.

Registry be asked to hand over all the original documents submitted by the respondent-claimant as objector for producing the same before the Learned Tribunal below. If necessary, keep the photocopies of those documents with the record.

Send down the LCR along with a copy of this judgment/award.

A copy of this judgment be furnished to the Learned Counsel for the appellant-Insurance Company and also to the Learned Counsel for the respondent-claimant-cum-cross-objector for information and compliance.

Pending application(s), if any, also stands disposed of.

JUDGE