



2025:UHC:11647

HIGH COURT OF UTTARAKHAND AT NAINITAL

Appeal From Order No. 45 of 2012

29 December, 2025

Smt. Mohni Devi & others

--Appellants

Versus

M/s. Kashipur Automobiles Service & others

--Respondents

Presence:-

Mr. Mohd. Azim, learned counsel for the appellants.

Mr. Bindesh Kumar Gupta, learned counsel for the respondents
(appeared through V.C.).

Hon'ble Pankaj Purohit, J.

The present Appeal From Order has been preferred by the appellant seeking enhancement of compensation awarded by the Motor Accident Claims Tribunal / District Judge, Udham Singh Nagar, vide judgment and award dated 29.03.2011 passed in Claim Petition No. 366 of 2008, whereby the Tribunal partly allowed the claim petition and awarded a sum of Rs. 50,000/- as lump sum compensation, fastening the liability upon the insurer. The appellant is aggrieved by the said award on the ground that the Tribunal failed to consider and assess the permanent disability suffered by the claimant as a consequence of the accident, resulting in gross inadequacy of compensation.

2. The brief facts of the case, as borne out from the record, are that on 25.06.2008 at about 12:00 midnight, the claimant Devdatt Joshi was working as a cleaner on tanker bearing registration No. UA-06C-2921, which was carrying diesel and proceeding towards Kashipur. When the vehicle reached near village



Udhawala on Afzalgarh–Jaspur road, Police Station Afzalgarh, District Bijnor, a tractor-trolley came from the opposite direction. In an attempt to save the tractor-trolley, the tanker went out of control and collided with a house. Due to the impact, the cleaner side window opened, as a result of which the claimant fell down from the tanker and his right hand was crushed under the rear wheel of the tanker. Immediately after the accident, the claimant was taken to the Primary Health Centre, Kashipur. After initial treatment, he was referred to a higher centre and admitted at Sai Hospital, Muradabad, where during treatment his right hand had to be amputated. It was pleaded that at the time of the accident the claimant was about 52 years of age and was earning Rs.3,300/- per month as a cleaner. Due to amputation of his right hand, the claimant became permanently and completely disabled, rendering him incapable of performing any manual work, which resulted in serious financial hardship and mental agony. On these averments, the claimant filed a claim petition under Sections 163-A/167 of the Motor Vehicles Act seeking compensation of Rs.5,50,000/- along with interest.

3. The appellants submitted that the victim (now deceased) was employed as a cleaner on the said tanker and was discharging his duties in the course of employment when the accident occurred. The appellants specifically pleaded that as a result of the accident, the right hand of the victim was crushed under the rear wheel of the tanker, necessitating amputation, thereby rendering him permanently and completely disabled. It was further pleaded that due to the said permanent disability, the victim had lost his earning capacity and



became incapable of performing any manual or physical work. They also submitted that the Tribunal failed to appreciate the disability certificate certifying that the victim has suffered a 80 % disability as a result of the said accident as a result of which only a meager amount Rs.50,000 was awarded to them. The appellants also submitted that they had incurred substantial medical expenses mental agony and loss of consortium. On these premises, the appellants have sought enhancement of compensation under Sections 173 of the Motor Vehicles Act along with interest before this Court.

4. The owner of the tanker filed a written statement admitting the occurrence of the accident but denied negligence. It was pleaded that the accident occurred while attempting to save the tractor-trolley coming from the opposite side. It was further pleaded that the tanker was duly insured with the National Insurance Company Ltd. for the period covering the date of the accident and that the driver was holding a valid and effective driving licence. It was asserted that in case of any liability, the same was to be borne by the insurer. The driver of the tanker also filed a written statement supporting the stand of the owner and denied rash and negligent driving. He asserted that the accident occurred due to unavoidable circumstances while trying to avert a head-on collision and that he possessed a valid driving licence at the relevant time.

5. The Insurance Company filed its written statement disputing the claim. It was pleaded that the accident did not occur due to negligence of the tanker driver and that the claim was exaggerated. The insurer also questioned the authenticity of the medical bills,



disability certificate and income claimed by the claimant. It was further pleaded that the driver did not possess a valid and effective driving licence at the time of the accident and, therefore, the insurer was not liable to indemnify the insured.

6. On the basis of the pleadings of the parties, the Tribunal framed the following issues for determination:

- 1. Whether on 25.06.2008 at about 12:00 midnight, near village Udhawala on Afzalgarh–Jaspur road, Police Station Afzalgarh, District Bijnor, the accident occurred due to tanker No. UA-06C-2921 while attempting to save a tractor-trolley coming from the opposite direction, resulting in injuries to claimant Devdatt Joshi? If yes, what is its effect?*
- 2. Whether on the date of the accident, the driver of tanker No. UP-06C-2921 was not holding a valid and effective driving licence? If yes, what is its effect?*
- 3. Whether the claimant is entitled to receive compensation? If yes, to what amount and from whom?*

7. While deciding Issue No.1, the Tribunal, upon appreciation of oral and documentary evidence, held that the accident occurred on the date, time and place as pleaded by the claimant. The Tribunal relied upon the testimony of P.W.1 Devdatt Joshi, the FIR, site plan, medical records and the statements of witnesses, and recorded a finding that the accident occurred when the tanker driver lost control of the vehicle while trying to save the tractor-trolley coming from the opposite direction. The Tribunal found that due to the collision with the house, the claimant fell down from the tanker



and sustained serious injuries leading to amputation of his right hand. Accordingly, Issue No.1 was decided in favour of the claimant.

8. While deciding Issue No.2 related to the validity of the driving licence of the tanker driver the Insurance Company pleaded that the driver did not possess a valid and effective driving licence at the time of the accident. However, the Tribunal, after examining the evidence led by the parties, including the driving licence on record and the testimony of the concerned official, recorded a categorical finding that the tanker driver Lalit Singh was holding a valid and effective driving licence on the date of the accident. Consequently, Issue No.2 was decided against the Insurance Company.

9. While deciding Issue No.3, the Tribunal held that the claimant was entitled to compensation on account of injuries sustained in the accident. The Tribunal took note of the fact that the claimant had suffered amputation of his right hand and had undergone prolonged treatment. However, without assessing the percentage of permanent disability or its functional impact on the earning capacity of the claimant, the Tribunal awarded a lump sum compensation of Rs.50,000/- towards medical expenses, disability and other heads combined. The Tribunal further held that since the tanker was duly insured and the driver possessed a valid driving licence, the liability to pay compensation was fastened upon the Insurance Company.

10. Having heard learned counsel for the parties and upon careful consideration of the material available on record, this Court finds that the Tribunal, while



correctly recording findings with regard to the occurrence of the accident, validity of the insurance policy and driving licence, committed a serious error in law in failing to assess compensation by taking into account the permanent disability suffered by the claimant. The medical evidence on record, including the disability certificate issued by the competent medical authority, clearly establishes that the claimant suffered amputation of his right upper limb and sustained permanent disability to the extent of 80%. The Tribunal has noticed the nature of injuries as well as the disability certificate, yet proceeded to award a lump sum compensation of Rs.50,000/- without undertaking the mandatory exercise of assessing loss of earning capacity and functional disability, rendering the award wholly inadequate and legally unsustainable. The law is well settled that in cases of permanent disability, particularly where the injured was engaged in manual labour, the assessment must focus on the functional impact of the disability on earning capacity rather than merely the percentage of physical disability. The claimant was working as a cleaner on a tanker, a vocation which requires full use of physical strength and limbs. The amputation of the right hand has, therefore, resulted in severe impairment of his earning capacity. In the facts of the present case, this Court finds no reason to take a view different from the medical assessment, and holds that the functional disability suffered by the claimant corresponds to the assessed permanent disability of 80%. The Tribunal has also returned a clear finding that on the date of the accident, the offending vehicle was duly insured and the driver was holding a valid and effective driving licence. No breach of policy conditions has been established by the



Insurance Company. These findings have not been even assailed before this Court. Consequently, the liability to satisfy the award rests upon the Insurance Company.

11. With regard to the assessment of income, it is true that the claimant could not produce documentary evidence to establish his exact monthly earnings. However, it is equally well settled that in cases involving workers from the unorganised sector, strict proof of income is often unavailable, and the Court is required to adopt a realistic and pragmatic approach. In **Ramachandrappa v. Royal Sundaram Alliance Insurance Co. Ltd. (2011) 13 SCC 236**, the Hon'ble Supreme Court held that income of a labourer cannot be assessed at an unrealistically low figure merely for want of documentary proof and that the Court must take judicial notice of prevailing economic conditions. Similarly, in **Syed Sadiq v. United India Insurance Co. Ltd. (2014) 2 SCC 735**, the Hon'ble Supreme Court accepted a higher notional income for a self-employed person in the absence of documentary evidence, emphasising that compensation must be just, fair and reasonable, and not illusory. In the present case, the accident occurred in the year 2008 and the claimant was employed as a cleaner on a tanker, indicating regular engagement rather than casual labour. Keeping in view the nature of employment, the period of accident, and the principles laid down in the aforesaid judgments of the Supreme Court, this Court deems it appropriate to assess the notional monthly income of the claimant at Rs.3,300/-, which is reasonable, modest and commensurate with the facts of the case.

12. The claimant was aged about 52 years at the time of the accident. As per the multiplier table approved



in **Sarla Verma v. Delhi Transport Corporation (2009)**

6 SCC 121, the appropriate multiplier for the age group of 51 to 55 years is 11. The annual income of the claimant thus comes to Rs.39,600/- (Rs.3,300 × 12). Since the claimant was self-employed and there is no evidence of assured future increments, no addition towards future prospects is warranted in view of the principles laid down in *Pranay Sethi* (2017) 16 SCC 680. Applying the multiplier of 11, the total income for the multiplier period comes to Rs.4,35,600/- (Rs.39,600 × 11). As the claimant has suffered 80% permanent functional disability, he is entitled to compensation to the extent of 80% of the aforesaid amount towards loss of future earning capacity. Accordingly, the loss of future earnings is computed at Rs.3,48,480/- (80% of Rs.4,35,600/-).

13. In addition to loss of earning capacity, the claimant is entitled to compensation under non-pecuniary heads. The Tribunal has awarded a lump sum amount of Rs.50,000/- towards medical expenses, pain and suffering and other allied heads. Considering the nature of injuries, amputation, prolonged treatment and loss of amenities of life, the said amount, though on the lower side, is not disturbed in the absence of detailed medical bills warranting further enhancement.

14. Thus, the total compensation payable to the claimant is recalculated at Rs.3,98,480/- (Rs.3,48,480/- towards loss of future earning capacity plus Rs.50,000/- under conventional heads).

15. In view of the aforesaid discussion, the appeal is allowed. The judgment and award dated 29.03.2011 passed by the Motor Accident Claims Tribunal is modified to the extent indicated above. The claimant



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shall be entitled to a total compensation of Rs.3,98,480/- along with interest at the rate awarded by the Tribunal from the date of filing of the claim petition till actual realization. It also appears that the Tribunal has already awarded a sum of Rs.50,000/- along with interest at the rate of 7% per annum if not deposited/paid in two months. The Insurance Company shall, therefore, be liable to pay only the balance enhanced compensation if not already paid/deposited. Accordingly, out of the total compensation of Rs.3,98,480/- as recalculated by this Court, the claimant shall be entitled to the enhanced amount of Rs.3,48,480/-. The compensation shall carry interest at the rate of 7% per annum from the date of filing of the claim petition till actual realization. The amount already paid or deposited pursuant to the award of the Tribunal shall be duly adjusted.

16. Let the T.C.R. be immediately sent back to the trial court for consignment.

17. Pending application, if any, stands disposed of accordingly.

(Pankaj Purohit, J.)

29.12.2025

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