

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

FIRST APPEAL NO.1262 OF 2003

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Shri Lalbahadur Ram Siroman Sing,]
Hanuman Tekadi, Kalu Sheth Ki Shop,]
Gate No.2, Santacruz (East),]
Mumbai – 400 055.] **...Appellant**

Versus

1. **Shri Panesar M. Singh,**]
24, Sangeet, N. S. Road No.6,]
Bombay – 400 056.]
2. **The New India Assurance Co. Ltd.**]
87, M. G. Road, Fort, Bombay – 400 023.] **...Respondents**

Ms.Ketki Gokhale i/b. Mr.Avinash M. Gokhale:-	Advocates for Appellant / Original Applicant.
Ms.Poonam Mittal:-	Advocate for Respondent No.2 – New India Assurance Co. ltd.

CORAM : S. M. MODAK, J.

RESERVED ON : 29th SEPTEMBER 2026

PRONOUNCED ON : 7th OCTOBER 2026

JUDGMENT :-

1. The issue involved in this Appeal is:-

*“Whether the Motor Accident Claims Tribunal – Mumbai (“**Tribunal**”) was proper in considering the income of the injured and was proper in applying the principles for adjudicating the compensation involving disability claim”.*

2. It is very well true, now the law on this aspect is recently crystallized. When a claim involving compensation arising out of an injury claim is there, the Tribunal has to:-

- (a) ascertain the income of the injured;
- (b) consider the percentage of physical and functional disability;
- (c) then to consider loss, if any, and then arrive at income of the deceased considering the functional disability;
- (d) as per the judgment of the Hon'ble Supreme Court, the *future prospect* also needs to be considered.

3. It is true, the Tribunal has not considered all these principles either due to not placing those judgments before the Tribunal or those judgments are of recent origin. Instead, the Tribunal ascertained lumpsum compensation on all heads. Ms.Mittal justified this method because disability is not proved. But, this Court cannot overlook those principles.

4. With this idea in mind, I have heard learned Advocate Ms.Gokhale for the Appellant / Claimant and learned Advocate Ms.Mittal for the Respondent No.2 – Insurance Company.

5. There is no dispute about question of negligence. When the Claimant was driving his auto rickshaw on 1st April 1990 from Milan Hotel towards Vile Parle Station, one Maruti car owned by Respondent

No.1 insured with Respondent No.2 came from wrong side and without giving horn, dashed the auto rickshaw. The Claimant sustained injuries. There is injury certificate at Exhibit-11 (obtained on 23rd July 1998 after 7 years) which records the following injuries on the person of the Claimant:-

- (a) Contused lacerated wound to right knee over skin deep coupled with fracture of TDR tibial medial angle (operated) and implant removed later on.
- (b) Severe pain swelling over right knee and foot.
- (c) Difficulty and pain during walking and other activities. Restriction on movements of right knee.
- (d) Malunion of the TDR fracture, therefore, minimal deformity of right knee.
- (e) Due to development of traumatic arthritis, he has pain and difficulty during the driving the auto rickshaw. (do not know the reason – whether it is due to accident or other ailment).

According to Dr.Ajgaonkar, the partial permanent disability is 22%.

6. Prior to the accident, from his auto rickshaw business, he was earning Rs.200/- per day. But, after the accident, he could not drive the auto rickshaw and now, he is earning Rs.1,500/- per month being a hawker. After the accident, he took treatment at Irla Nursing Home, Vile Parle and then to Cooper Hospital. The information was also given to Juhu Police Station. He has entered into the witness-box. The

owner of Maruti Car has not filed reply before the Tribunal. It was filed by the Insurance Company only.

7. Learned Advocate Ms.Gokhale has invited my attention to the said Written Statement. They have only disputed the existence of policy and reserved their reply to other averments. Ms.Mittal has not pointed out to me any other Written Statement. The Claimant has given evidence but he was not cross-examined. His evidence goes unchallenged. The Tribunal has given exhibit numbers to the following documents:-

- (a) Copy of F.I.R. to Vile Parle Police Station lodged by the Claimant against the driver of Gipsy.
- (b) Copy of panchnama.
- (c) Case papers from the Corporation Hospital.
- (d) Injury certificate dated 23rd July 1998 issued by Dr.Ajgaonkar (Exhibit-11).
- (e) Hospital bills.

Findings

8. Ms.Gokhale has invited my attention to the findings by the Tribunal. They are as follows:-

- (a) I feel that though the applicant suffered disability of partial permanent nature to the extent of 22% as stated by the Orthopedic Surgeon in Exh.11, I feel that a just and reasonable compensation for pain and suffering and

Disability would be Rs.30,000/- only as after the accident the applicant is not idle and doing the business of hawker and earning about Rs. about Rs.1500/- per month.

- (b) Thus, loss of Rs.500/- per month to the applicant and not more and hence the amount of Rs.30,000/- awarded to the applicant for disability and pain and suffering will be just and reasonable compensation.
- (c) The bills of medicines not produced. The bills of Orthopedic charges are produced. The Tribunal granted Rs.4,000/- towards the treatment, conveyance and special diet.

9. According to Ms.Mittal, though the Tribunal has recorded that after filing of the Written Statement on 5th September 1991, the Applicant has remained present on 22nd January 1999 and thereafter, has not remained present, still the interest at 9% is granted from the date of Application till realization. According to Ms.Mittal, from 5th September 1991 till 22nd January 1999, an interest ought not to have been granted.

10. Learned Advocate Ms.Gokhale relied upon the observations in case of *Indra Bai V/s. Oriental Insurance Company Ltd. & Another*¹.

11. Whereas, learned Advocate Ms.Mittal relied upon the following judgments:-

- (a) *Raj Kumar V/s. Ajay Kumar and Another*²

¹ 2023 INSC 624

² (2011) 1 Supreme Court Cases 343

- (b) *Sudhir Bhuiya V/s. National Insurance Company Ltd.&Anr.*³
- (c) *Rajesh Kumar Kaushik V/s. Tej Narayan Singh & Others*⁴

12. All the judgments are on the issue of not examining the doctor who has issued the disability certificate and on the point of how the private documents without proving them can be appreciated in evidence.

13. If we consider the guidelines given by the Supreme Court, in adjudicating the compensation, it can very well be said that the Tribunal has not adopted proper method for arriving at *just compensation*. My findings are as follows:-

- (a) Though the Tribunal accepted 22% partial permanent disability, still the Tribunal has arrived at compensation of Rs.34,000/- in lumpsum. First of all, the physical disability has to be ascertained and then functional disability.
- (b) In case of *Indra Bai* (cited supra), the Supreme Court was dealing with the matter under Workmen's Compensation Act, 1923 ("**WC Act, 1923**"). It is true, as per Schedule-I to the WC Act, a list of injuries resulting in permanent total disability and permanent partial disability is given. So, the *nature of injuries* and *percentage of loss of earning capacity* are codified. If due to disabilities, if an injured is incapacitated **for all work**, the disability will be 100%.

³ 2005 (1) TN MAC 414 (Cal.)

⁴ 2007 SCC OnLine Chh 203

(c) Whereas, the observations in case of ***Raj Kumar*** (cited supra) involves an interpretation of the provisions of Motor Vehicles Act, 1988 Act (“**MV Act, 1988**”). In paragraph No.14, by way of illustration, it is explained how the percentage of disability affects his earning capacity. In nutshell, it depends upon the part of the body which is affected and the nature of occupation and the use of that part of body in doing that occupation. This ratio will be more relevant. The Supreme Court emphasized on examining the doctor issuing the disability certificate. Admittedly, in this case, the doctor is not examined.

14. It is true, the Claimant in his chief-examination has mentioned about his disability though not stated about percentage of disability. He has also stated that due to the injuries, he was not in a position to ply the auto rickshaw. It is also true, the Insurance Company has neither cross-examined the witnesses nor adduced any evidence on any aspect. Even though, if we believe that the Claimant is not in a position to drive the auto rickshaw which does not mean that he cannot do any other work. There was only contused lacerated wound to the TDR. Even the implant was removed subsequently.

15. There is no satisfactory evidence that considering the injuries, the Claimant is totally handicapped in plying the auto rickshaw. In any extent, it cannot be said to be 100% functional disability as submitted

by **Ms.Gokhale**. Earlier, the Claimant was earning Rs.200/- per day i.e. Rs.6,000/- per month and now, he is earning Rs.1,500/- per month by working as a hawker. I consider 10% functional disability because it is not the case of amputation but only wound and fracture. It is curable.

16. I consider the income of the Claimant as Rs.6,000/- per month. It is but natural that in the year 1991, he was earning Rs.200/- per month by plying the auto rickshaw. There is no need to consider the income which he gets after the accident. Because, we are applying the *principle of multiplier*. At the same time, he needs to be paid certain amount towards pain and suffering, special diet and conveyance. As held in **Raj Kumar's** case, if there is no 100% 'loss of future earning capacity', there can be a compensation granted under the head 'loss of amenities' or 'loss of expectation of life' (paragraph No.15).

17. In view of that, the compensation has to be redetermined. It is as follows:-

No.	Particulars	Amount granted by the Tribunal	Amount granted by this Court
1.	Rs.6,000X12X18=Rs.12,96,000/-		
2.	22% disability/ 10% disability	Rs.34,000/- (lumpsum)	Rs.12,96,000X10%= Rs.1,29,600/-
3.	Future prospect (40%)	Rs.34,000/- (lumpsum)	Rs.1,29,600/-X40%= Rs.51,840/-
4.	Medical treatment	Rs.4,000/-	Rs.4,000/-

5.	Pain and suffering	Rs.34,000/- (lumpsum)	Rs.25,000/-
6.	Loss of amenities	Rs.34,000/- (lumpsum)	Rs.25,000/-
7.	Special diet	Rs.34,000/- (lumpsum)	Rs.5,000/-
8.	Conveyance	Rs.34,000/- (lumpsum)	Rs.10,000/-
	Total	Rs.34,000/- (lumpsum)	Rs.2,50,440/-
	Enhanced amount		Rs.2,16,440/-

18. While quantifying the amount, I have also considered the submission of Ms.Mittal about not prosecuting the Petition vigilantly and non-entitlement to interest for that period. Instead of specifically denying the interest for that period, I have reduced the quantum on all heads.

19. Considering the above calculation, following order is passed:-

-: **ORDER** :-

- (a) **The Appeal is partly allowed.**
- (b) It is held and declared that the Appellant/Original Applicant is entitled to get an amount of Rs.2,16,440/- and the Respondent Nos.1(Insured) and Respondent No.2(Insurer) are jointly and severally directed to pay that enhanced amount of Rs.2,16,440/- to the Appellant/Original Applicant within a period of 8 weeks from the date of uploading of this order.

- (c) The Respondents are directed to pay this amount at the rate of 6% per annum from the date of the Petition till the time, the amount is paid.
 - (d) The Appellant/Original Applicant is entitled to the enhanced amount of compensation subject to deposit of deficit Court Fees.
20. In the light of the above observations, **the Appeal is disposed of.**
21. **Pending Applications, if any, also stand disposed of.**

[S. M. MODAK, J.]