

AFR

**HIGH COURT OF CHHATTISGARH BILASPUR****M. A. (C) No. 524 of 2013**

*(Arising out of award dated 18.02.2013 passed in Claim Case No.141 of 2011 by the 3<sup>rd</sup> Additional Motor Accident Claims Tribunal, Raipur, District Raipur, Chhattisgarh)*

ICICI Lombard General Insurance Co. Ltd. through it's Legal Manager, ICICI General Insurance Co. Ltd., Ground Floor, Vanijya Bhawan, Devendra Nagar Road, Raipur, Chhattisgarh.

**---- Appellant****Versus**

1. Abdul Rahim son of Late Shri Abdul Kadar, aged about 45 years, resident of Behind Haq Manzil Bayron Bazar, Raipur, District Raipur, Chhattisgarh.
2. Dharamjeet Singh, son of Shri Gurdeep Singh, aged about 34 years, resident of Manifeet, Shokhi Colony, Tata Nagar, Thana Verma Mines, District Jamshedpur, Jharkhand.
3. Gurdeep Singh Bhatia, son of Shri Mohan Singh, resident of Punjabi Mines, Mango, District Jamshedpur, Jharkhand.

**---- Respondents****M. A. (C) No. 676 of 2013**

*(Arising out of award dated 18.02.2013 passed in Claim Case No.141 of 2011 by the 3<sup>rd</sup> Additional Motor Accident Claims Tribunal, Raipur, District Raipur, Chhattisgarh)*

Abdul Rahim S/o Late Abdul Kadar, aged about 45 years R/o Behind Hak Manjil, Bayron Bazar, Raipur, Police Station Civil Line Raipur, Distt.- Raipur (C.G.) Civil and Revenue District Raipur(C.G.).

**---- Appellant****Versus**

1. Dharamjeet Singh S/o Gurdeep Singh Bhatiya, R/o Village-Manifit, Shokhi Colony, Tata Nagar, Police Station- Verma Mines, District-Jamshedpur (Jharkhand) (Driver-Truck Trailer Bearing No. H.R. 38 D-2409)
2. Gurdeep Singh Bhatiya S/o Mohan Singh, R/o Village-Punjabi Line Mango, District-Jamshedpur (Jharkhand)

(Owner-Truck Trailer Bearing No. H.R. 38 D-2409)

3. I.C.I.C.I. Lombard General Insurance Company Ltd.  
Through- Branch Manager, Branch Office Lal Ganga  
Shopping Mall, G.E. Road, Raipur, Distt.- Raipur,(C.G.)  
(Insurer-Truck Trailer Bearing No. H.R. 38 D-2409)

**---- Respondents**

**MAC No.524 of 2013**

For Appellant : Shri K. Rohan, Advocate  
For Respondent No.1 : Shri Pawan Kesharwani, Advocate  
For Respondents No.2 & 3 : None

**MAC No.676 of 2013**

For Appellant : Shri Pawan Kesharwani, Advocate  
For Respondents No.1 & 2 : None  
For Respondent No.3 : Shri K. Rohan, Advocate

**Hon'ble Shri P. R. Ramachandra Menon, Chief Justice**  
**Hon'ble Shri Parth Prateem Sahu, Judge**

**Judgment On Board**

**Per Parth Prateem Sahu, Judge**

**30.06.2020**

1. Appellants in both the appeals have challenged the same award dated 18.02.2013 passed by 3<sup>rd</sup> Additional Motor Accident Claims Tribunal, Raipur, District Raipur Chhattisgarh (hereinafter referred to as 'Claims Tribunal') in Claim Case No.141 of 2011, therefore, both the appeals are being decided by this common judgment.
2. MAC No.524 of 2013 is preferred by the Insurance Company challenging fastening of liability and also on quantum and MAC No.676 of 2013 is preferred by the claimant seeking enhancement of compensation on the ground mentioned therein.

3. The facts relevant for disposal of these appeals, are that, on 12.11.2008 at about 10.30 PM, when the injured claimant while standing on the side of the road, busy in conversation with driver of another Bus, at that relevant time, one Truck Trailer bearing registration No.HR-38-D-2409 (hereinafter referred to as 'offending Truck') coming from Bargad, driven by non-applicant No.1, dashed the claimant. In the said accident, claimant suffered severe injuries over his person including both of his legs, waist, head, ribs and other parts of the body. The claimant suffered fracture injury on femur bone of both the legs and bone below the knee also got fractured (tibia bone). The claimant was taken to the Government Hospital at Saraipali and from there referred to Raipur. The accident was reported to the concerned Police Station, based upon which, criminal case was registered against non-applicant No.1, driver of offending Truck for the offence punishable under Sections 279, 337 and 338 of the Indian Penal Code.
4. The claimant/injured filed an application before the concerned Claims Tribunal under Section 166 and 140 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'M.V. Act') for compensation mentioning therein that on the date of accident, he was working as driver with Sharma Travels on a Bus bearing registration NO.CG-04/E/0248 and earning Rs.6,000/- per month. In the accident, the claimant suffered fracture injury over his right femur bone and left femur bone. He also suffered fracture injury over his right tibia

bone and further grievous injuries on his head, waist and ribs. He took treatment as indoor patient at Dr. B.R. Ambedkar Memorial Hospital at Raipur for a period of 2 months and during the course of treatment, the doctors while operating inserted steel rod on both of his femur bones and right tibia bone. After discharge, the claimant took treatment as outpatient at Dr. B.R. Ambedkar Memorial Hospital at Raipur, but looking to non-recovery of his injuries, he took treatment at Menon Nursing Home as inpatient for about 15 days and thereafter, at Visharad Hospital at Raipur for about 1½ months as inpatient. Doctor of Visharad Hospital has operated legs of the claimant thrice. Due to injuries suffered by the claimant, he became completely disabled to do his routine work as also unable to do his work of driving and deprived of his earning and claimed Rs.16,00,000/- as compensation on all heads.

5. Non-applicant No.1 did not choose to appear before the learned Claims Tribunal and was proceed *ex parte*.
6. Non-applicant No.2, owner of the offending Truck submitted reply to claim application denying the fact of accident and pleaded that on the date of accident, offending Truck was insured with non-applicant No.3/Insurance Company and the liability, if any, will be upon the Insurance Company to pay the amount of compensation.
7. Non-applicant No.3/Insurance Company of the offending Truck submitted reply to claim application and pleaded that the offending

Truck was being driven in breach of conditions of the insurance policy, driver of offending Truck was not possessing valid and effective driving license, there is no valid permit and fitness of the offending Truck. It was further pleaded that the place of accident is very busy area and if rash and negligent driving as alleged against driver of the offending Truck is accepted then other persons also had suffered injuries which was not there. Accident was on account of the negligence of the claimant himself. It was also pleaded that the disability suffered by the claimant has not been proved and also prayed for exoneration of the Insurance Company from its liability on the ground of breach of policy conditions.

8. Learned Claims Tribunal on appreciation of the pleadings, evidence and material placed on record by the respective parties, held that the claimant suffered grievous injuries resulting in permanent disability on account of motor accidental injuries due to rash and negligent driving of offending Truck by non-applicant No.1, considering seizure memo Ex. P/4 shows that police seized Trailer, R.C. Book, permit, fitness, insurance policy and driving licence of driver Dharamjeet Singh, held that Insurance Company not led any evidence to prove the pleadings of breach of conditions of insurance policy and awarded a total sum of Rs.6,53,900/- by assessing permanent disability of the claimant to the extent of 40%.

- 9.** Shri K. Rohan, learned counsel for the appellant in MAC No.524 of 2013 and respondent No.3 in MAC No.676 of 2013 submits that the claimant has failed to prove the negligence on the part of the driver of offending Truck. He further submits that claimant has further failed to prove his income by placing cogent and reliable piece of evidence. He also submits that the claimant has not produced the driving license in evidence to show that he is engaged as a driver to drive a Bus and also that the doctor has stated the disability is only with respect to lower limb and not for the whole body, but the learned Claims Tribunal erred in assessing the disability of 40% while calculating the amount of compensation. He lastly submits that on the date of accident driver of the offending Truck was not possessing valid and effective driving licence but learned Claims Tribunal without considering this fact has fastened the liability upon the Insurance Company to satisfy the amount of compensation.
- 10.** Per contra, Shri Pawan Kesharwani, learned counsel for respondents No.1 in MAC No.523 of 2013 and appellant in MAC No.676 of 2013 submits that learned Claims Tribunal taking into account the entire pleadings and evidence placed on record by the respective parties has held the income of the claimant as Rs.6,000/- per month, which cannot be said to be on higher side looking to the nature of engagement of the claimant and the date of accident. He further submits that the claimant has filed a separate appeal bearing MAC No.676 of 2013 seeking

enhancement of the amount of compensation on the ground that though the doctor has stated 40% of permanent disability for the whole body, but looking to the nature of his work and employment, the claimant is not able to work as driver and has suffered 100% disability. It is contended that the claimant is also entitled for addition of amount towards future prospects in his monthly income and compensation on heads of non-pecuniary damages, to which, the claimant is entitled looking to the nature of injuries suffered by him.

- 11.** We have heard learned counsel appearing for the respective parties and perused the record carefully.
- 12.** To appreciate the submission made by learned counsel for the appellant/Insurance Company that the learned Claims Tribunal has erred in assessing the income of the injured as Rs.6,000/- per month from the occupation of driver, we have gone through the record wherein except oral evidence of the claimant, there is no other material brought on record by claimant to prove his income. The claimant has not placed on record copy of driving licence in support of his contention that he is engaged in occupation of driver of bus. If that be so, then definitely, he cannot be engaged as a driver without there being a valid and effective driving licence issued by competent authority. The claimant even in his evidence has not stated as to why the copy of driving licence has not been placed on record. Furthermore, the claimant in his evidence has

stated that he was engaged to drive a particular bus with the particular transport company, but he has not examined any employee of the transport company or owner of the company as witness to prove the fact of his engagement as driver.

**13.** In absence of copy of the driving licence on record and specific evidence to show that he is having qualification to work as a driver and engaged as a driver, we find it difficult to accept the submission of learned counsel for the claimant that he was working as driver. The learned Claims Tribunal committed error in holding that the claimant was engaged as driver without any admissible piece of evidence. The said finding of learned Claims Tribunal that the claimant was working as a driver and earning income of Rs.6000/- per month is not sustainable and is set aside. The claimant who was an able-bodied person, 45 years of age but failed to prove his occupation, more so skilled occupation as pleaded by claimant, then looking to his age, it will be proper to hold the appellant to be working as labour on the date of accident. We hold that on the date of accident, the occupation of the claimant to be a 'manual labour' and not as a 'driver'.

**14.** From perusal of record, it would show that immediately after the accident on 12.11.2008, the claimant was taken to Community Health Centre at Saraipali, where the doctor found three injuries initially as per Ex.P/3 i.e. MLC report. Injury No.3 mentions the fracture of femur of both lower limb. Ex.P/26 is a discharge ticket

of Dr. B.R. Ambedkar Memorial Hospital at Raipur, which mentions the details of the injuries and treatment given to the claimant. Injuries as mentioned in Ex.P/26 is fracture of shaft femur left 1/3, fracture of medial condyle left femur, fracture of lateral condyle left tibia, fracture of shaft femur right 1/3 and fracture of femur condyle right, common fracture of tibia fibula right 1/3. As per Ex.P/27, injured part of the body of claimant was shown to be operated on 04.12.2008, 22.12.2008 and 29.12.2008 mentioning major operations. Ex.P/28 is a medical prescription of Visharad Hospital at Raipur dated 17.02.2009. The medical prescription which is filed by the claimant before the Claims Tribunal is in continuation till 02.02.2011. Ex.P/246 is the prescription issued by OPD Department of the Dr. B.R. Ambedkar Memorial Hospital at Raipur, in which, it is mentioned as non union of right femur with ankylosis right knee with shortening. The claimant also filed Ex.P/248 certificate of disability issued by the Dr. A.A. Saify in support of his claim and other disability certificate issued by Medical Board as Ex. P/265.

15. To prove his injuries, the claimant has examined Dr. Shridhar Rao (AW-3), Orthopedic Specialist of Visharad Hospital, Raipur ( one of the treating doctor), who in his evidence has stated that from perusal of the record, it reveals that the claimant undergone operation of DHS of left femur and platting of left femur on 04.12.2008; interlock nailing of right femur on 22.12.2008 and hybrid fixator through operation of his right tibia on 29.12.2008.

The claimant was operated at Visharad Hospital at Raipur on 17.02.2009 where it was found that there was pus formation on both of his thighs and hips and big cavities were there. On 21.02.2009, femur bone was fixed by cemented nail wall where it was found pus. On 12.03.2009, his wound over right thigh was closed and grafting of his left knee was done and he was discharged from hospital on 25.03.2009. He also stated that the claimant was again admitted in the hospital on 15.06.2009 due to infection on his left thigh as pus was draining from it and his wound was left open and discharged the patient on 17.06.2009. Again on 27.10.2009, the claimant was admitted due to draining of pus from his right thigh and he was discharged on 02.11.2009.

16. Looking to the nature of injuries on his hip, both of his thighs and right tibia bone and non union of right femur with ankylosis right knee with shortening as diagnosed by the doctor of Dr. B.R. Ambedkar Hospital (Government Hospital) at Raipur on 02.02.2011 mentioned therein review SOS, which itself shows that even after lapse of more than two years of the accident and taking long treatment at different hospitals and undergoing several operations as well, there was non union of right femur of the claimant.
17. To prove the disability certificate, the injured claimant has examined Dr. P.K. Gupta (AW-1) posted at District Government Hospital, Pandari, who in his cross-examination very clearly stated

in paragraph-6 as under :

“6. यह कहना गलत है कि ओपीडी टिकिट में आवेदक के एक्सरे को देखकर किसी तरह का कोई निष्कर्ष मैंने प्रदर्श 261 में कोई दर्ज नहीं किया। जो निष्कर्ष मैं एक्सरे को देखकर दिया है उसमें पोस्टट्रमेटिक माल यूनियन इन फ्रेक्चरशिप फीमर राईट साईड लोअर 1 थर्ड पार्ट विथ क्रानिक ओस्टियो माईलाईटेड विथ टोटल इन कलाईसोसिस राईट इन ज्वाईट में दर्ज किया था।”

18. This witness in his examination-in-chief in very clear terms stated that the injured appeared before him on 02.09.2011 with OPD Slip No.23830 and requested for preparing the disability certificate. He examined complete documents of the injured, done his physical examination, taken new X-ray and referred him to the Physiotherapy Orthopedic Department for appropriate treatment and opinion. He further stated that injured again appeared on the day of Medical Board on 20.09.2011 with reference of the Government Physiotherapy College and Department of Orthopedic, Raipur that further treatment of the patient is not possible and thereafter he assessed the disability of the injured.
19. Perusal of statement of Dr. P.K. Gupta (AW-1) who issued the disability certificate, would show that he issued the disability certificate on the basis of X-ray report, it has been mentioned that “Post traumatic malunion in fractureship femur right side lower 1/3rd part with chronic osteomyelitis with total in ankylosis right in joint”. The acute chronic osteomyelitis have an effect of recurrent

episodes of infections with or without chronic scinus formation as mentioned in the “Hunter's Tropical Medicine and Emerging Infectious Disease (9<sup>th</sup> Edition 2013)”.

**20.** Dr. Shridhar Rao (AW-3) (treating doctor) in his evidence stated that he found infection on both of the thighs of the claimant and draining pus from it. Ex.P/247 which is OPD medical prescription of Dr. B.R. Ambedkar Memorial Hospital at Raipur, a Government Hospital dated 16.10.2010, in which, it is mentioned that “infected non union right shaft femur and knee stiffness”. On 02.02.2011, the injured appeared before the OPD treatment of Dr. B.R. Ambedkar Memorial Hospital at Raipur and the doctor mentioned in the OPD Slip “clinically non union right femur ankylosis right knee shortening”. Looking to the date of accident i.e. 12.11.2008 till 02.02.2011 injury suffered by injured was not cured and it was found “non union of right shaft femur”. Further, the doctor of the Medical Board on examination of his recent X-ray and physical examination found “Post traumatic malunion in fractureship femur right side lower 1/3rd part with chronic osteomyelitis with total ankylosis in right knee joint.” Dr. P.K. Gupta (AW-1) who had issued disability certificate has assessed the disability on the right leg or lower limb. No specific question was put to this witness by the learned counsel for the non-applicants as to what nature of work the injured will be able to perform.

**21.** Now the question arises for consideration as argued by learned

counsel for the appellant/claimant in MAC No.676 of 2013 that so far as the nature of work of claimant is concerned, the claimant has suffered 100% permanent disability though the doctor has assessed 75% permanent disability on right leg.

22. In cases of permanent disability, it is for the Tribunals and Courts to look into the functional disability of a person suffering permanent disability affecting his earning capacity. The percentage of disability assessed by the doctor and mentioned in the disability certificate does not result in corresponding loss of earning capacity to that extent only. It may affect the earning capacity in some cases less than the percentage of disability mentioned in the disability certificate and in some cases, it may affect the earning capacity somewhat more than the permanent disability assessed and mentioned in the disability certificate, subject to the nature of work, in which, the injured is engaged and the part of the body, over which, he suffered permanent disability.
23. The Hon'ble Supreme Court in the matter of **Raj Kumar v. Ajay Kumar and another** reported in **(2011) 1 SCC 343** had considered the assessment and award of amount of compensation on the head of loss of future income in cases of permanent disability and held thus :

“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 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 SCC 254 and Yadava Kumar v. National Insurance Co. Ltd. (2010) 10 SCC 341*).

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 the *Manual for Evaluation of Permanent Physical Impairment for Orthopedic 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."

24. The Hon'ble Supreme Court in the matter of **Mohan Soni v. Ram Avtar Tomar and others** reported in **(2012) 2 SCC 267** held thus :

"12. In light of the aforesaid decisions, we find it extremely difficult to uphold the decision of the High Court and the Tribunal based on the finding that the loss of the appellant's earning capacity as a result of the amputation of his left leg was only 50%. It is noted above that the appellant used to earn his livelihood as a cart puller. The Tribunal has found that at the time of the accident his age

was 55 years. At that age it would be impossible for the appellant to find any job. From the trend of cross-examination it appears that an attempt was made to suggest that notwithstanding the loss of one leg the appellant could still do some work sitting down such as selling vegetables. It is all very well to theoretically talk about a cart puller changing his work and becoming a vegetable vendor. But the computation of compensation payable to a victim of motor accident who suffered some serious permanent disability resulting from the loss of a limb etc. should not take into account such indeterminate factors.

13. Any scaling down of the compensation should require something more tangible than a hypothetical conjecture that notwithstanding the disability, the victim could make up for the loss of income by changing his vocation or by adopting another means of livelihood. The party advocating for a lower amount of compensation for that reason must plead and show before the Tribunal that the victim enjoyed some legal protection (as in the case of persons covered by The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995) or in case of the

vast multitude who earn their livelihood in the unorganized sector by leading cogent evidence that the victim had in fact changed his vocation or the means of his livelihood and by virtue of such change he was deriving a certain income.”

25. In the matter of **Jakir Hussein v. Sabir and others** reported in **(2015) 7 SCC 252**, Hon'ble Supreme Court while considering its earlier judgment of **Raj Kumar** case (supra) has held thus :

“16. In **Raj Kumar** (supra), this Court specifically gave the illustration of a driver who has permanent disablement of hand and stated that the loss of future earnings capacity would be virtually 100%. Therefore, clearly when it comes to loss of earning due to permanent disability, the same may be treated as 100% loss caused to the appellant since he will never be able to work as a driver again. The contention of the respondent Insurance Company that the appellant could take up any other alternative employment is no justification to avoid their vicarious liability.....”

26. Now looking to the nature of injuries suffered by the appellant/claimant, the parts of the body which were injured along with the evidence of Dr. P.K. Gupta (AW-1) who issued the disability certificate, Dr. Shridhar Rao (AW-3) who is treating doctor as well as OPD slip of the claimant issued by Dr. B.R.

Ambedkar Memorial Hospital at Raipur where he took treatment, in which, it is mentioned as infected non union of right femur with ankylosis right knee and shortening as well as the statement of Dr. P.K. Gupta (AW-1) who issued the disability certificate, found “post traumatic malunion in fractureship femur right side lower one third part with chronic osteomyelitis with total ankylosis right in joint” the question now arises for consideration before this Court is what will be the loss of income suffered by appellant due to the nature of the injuries and disability suffered by him.

- 27.** The Hon'ble Supreme Court in the matter of **R. D. Hattangadi v. Pest Control (India) Pvt. Ltd. and others** reported in **(1995) 1 SCC 551** has held thus :

“12. In its very nature whenever a tribunal or a court is required to fix the amount of compensation in cases of accident, it involves some guesswork, some hypothetical consideration, some amount of sympathy linked with the nature of the disability caused. But all the aforesaid elements have to be viewed with objective standards.”

- 28.** As we have held in preceding paragraphs that the claimant has pleaded and made statement before the learned Claims Tribunal that he was engaged as driver at the time of accident, but could not able to prove by placing any evidence on record and in absence of any prove of specific nature of work, looking to the age

of claimant on the date of accident i.e. 44-45 years of age, it can be considered the nature of employment of claimant as manual labour.

- 29.** With the nature of injuries suffered by the claimant i.e. fracture on both femur bones, got infected and fracture on right tibia, which even after continuous treatment of more than two years have been found by the doctor of non union femur right side lower 1/3rd with chronic osteomyelitis with total ankylosis right knee joint on the date of issuance of disability certificate as well as the nature of post-treatment suffering by the appellant/claimant, in our considered opinion, the claimant will not be able to perform the work of labour. The work of labour requires load carrying capacity, walking, sitting and pressure on both of legs, which in view of the medical evidence available on record, claimant may not be able to do the work of labour.
- 30.** The Hon'ble Supreme Court in its judgments have held that loss of future earning is not to be considered only by considering the percentage of disability mentioned in the disability certificate and proved by the doctor. The percentage of disability will have the effect of loss of income to one person engaged in different work than the other person who is engaged in different work differently.
- 31.** Considering the facts of the present case, the injury left with the claimant as not treatable and curable as held by Dr. P.K. Gupta (AW-1) is somewhat severe. In view of medical evidence placed

on record by the claimant, considering the evidence of Dr. P.K. Gupta (AW-1) (disability certificate issuing doctor) and Dr. Shridhar Rao (AW-3) (treating doctor) further taking into consideration the OPD Slips (Exs. P/246 and P/247), we are of the view that the claimant will not be able to do the work of labour with the nature of permanent disability stated by doctor in his evidence and mentioned in the disability certificate issued by the Medical Board as 75% (permanent physical impairment), we find it appropriate to hold that the appellant suffered 75% loss of his earning capacity.

32. In view of above, if we consider the heads, on which, learned Claims Tribunal awarded amount of compensation are as under :

|    |                                                                        |                                                            |
|----|------------------------------------------------------------------------|------------------------------------------------------------|
| 1. | Medical expenses                                                       | Rs.1,16,701/-                                              |
| 2. | Attendant                                                              | Rs.30,000/-                                                |
| 3. | Special diet                                                           | Rs.12,000/-                                                |
| 4. | Mental and Physical pain and suffering during treatment                | Rs.20,000/-                                                |
| 5. | Loss of income during the period of treatment                          | Rs.72,000/-                                                |
| 6. | Loss of future earning considering the percentage of disability as 40% | Rs.4,03,200/-                                              |
|    | <b>Total</b>                                                           | <b>Rs.6,53,901/-<br/>(rounded off to<br/>Rs.6,53,900/-</b> |

33. The learned Claims Tribunal has not awarded any amount towards loss of amenities in life, conveyance expenses during the period of treatment, for loss of expectation in life and as argued by

the learned counsel for the claimant that learned Claims Tribunal has awarded the amount on the heads to be stated above on lower side.

- 34.** For the forging reasons as well as the facts and circumstances of the case, we deem it fit and proper to recalculate the amount of compensation as under :

As we have held that the occupation of the claimant to be taken as manual labour looking to the date of accident, we find it appropriate to assess the income of the claimant on notional basis taking into consideration the price index and wage structure as well as cost of living to Rs.4,000/- per month i.e. 48,000/- per annum. The injured on the date of accident is shown to be 45 years of age, therefore, there will be an addition towards future prospects in the income of the claimant in view of law laid down by Hon'ble Supreme Court in the matter of **National Insurance Company Limited v. Pranay Sethi and others** reported in **AIR 2017 SC 5157**. In **Pranay Sethi** (supra), the Hon'ble Supreme Court has held that the person who is in between 40-50 years of age and not in permanent employment, there will be an addition of 25% of the established income. By adding 25% ( $48,000 \times 25\% = 12,000$ ) of the established income, total income of the claimant will come to Rs.60,000/- ( $48,000 + 12,000$ ) per annum. 75% towards loss of future earnings, the annual loss

of income comes to Rs.45,000/- (60,000 x 75%). Looking to the age of the claimant, the appropriate multiplier will be 14 as held by Hon'ble Supreme Court in the matter of **Sarla Verma (Smt.) and others v. Delhi Transport Corporation and another** reported in **(2009) 6 SCC 121**. By applying the multiplier of 14, the total loss of earning of the claimant will come to Rs.6,30,000/- (45,000 x 14). Apart from above loss of earning, the claimant will be further entitled for an amount of Rs.1,16,701/- towards medical expenses, Rs.30,000/- towards attendant, Rs.12,000/- towards special diet and Rs.72,000/- towards loss of earning during treatment as awarded by learned Claims Tribunal.

35. The Hon'ble Supreme Court in the judgments referred above, has considered the award of compensation on two heads i.e. pecuniary damages and non-pecuniary damages. The pecuniary damages consist of medical expenditure, hospitalization, medicine, transportation, nursing, food and other miscellaneous expenditure like loss of earning during the period of treatment, future loss of earning on account of permanent disability as well as future medical expenses. The head of non-pecuniary damages consist of pain and suffering, trauma on account of the injuries suffered, loss of amenities and enjoyment of life as well and loss of expectation of life.
36. As per medical evidence available on record, the claimant has

undergone surgery for about 5 times during the period of treatment. He suffered infection on all of his injured bones i.e. hip, right femur, left femur and it was found pus formation in all the three sites, which definitely will be painful to the claimant continuously for the period as evident from the statement of Dr. Shridhar Rao (AW-3) from February 2009 to 02.11.2009. That apart, Dr. P.K. Gupta (AW-1) in his evidence has very specifically stated in cross-examination of paragraph-6 about the nature of suffering of disease left over the injury after treatment on the date of his examination i.e. 20.09.2011 and will suffer further pain and suffering due to the injury for his whole life in view of nature of injuries left to be incurable on the right femur.

**37.** In the aforementioned facts and circumstances of the case, we find it appropriate to award Rs.50,000/- towards pain and suffering. The claimant is a man, aged about 45 years and will have to live whole of his life with the disability and also with incurable injury, therefore, we find it appropriate to award Rs.25,000/-, towards loss of amenities and enjoyment of life and Rs. 25,000/- towards loss of expectation of life. The learned Claims Tribunal has not awarded any amount towards conveyance expenses, we find it appropriate to award Rs.25,000/- towards conveyance expenses from the date of accident and for future in his life.

**38.** On the basis of above recalculation, now the claimant will be

entitled for a total compensation of **Rs.9,85,701/-** (6,30,000 + 1,16,701 + 30,000 + 12,000 + 72,000 + 50,000 + 25,000 + 25,000 + 25,000) instead of Rs.6,53,900/- as awarded by the learned Claims Tribunal. The amount of compensation will carry interest at the rate of 6% per annum from the date of filing of the claim application till its realization.

- 39.** In the result, both the appeals i.e. MAC No.524 of 2013 filed by the Insurance Company and MAC No.676 of 2013 filed by the claimant, are allowed in part. The impugned award is modified to the extent indicated herein above.

Sd/-  
**(P. R. Ramachandra Menon)**  
**Chief Justice**

Sd/-  
**(Parth Prateem Sahu)**  
**Judge**