

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

FIRST APPEAL NO.179 OF 2015

The Oriental Insurance Co. Ltd.
Amravati Divisional Office,
through the Regional Manager,
Nagpur Regional Office,
T.P. Hub, Shuklla Bhavan,
Dharampeth, Nagpur

...APPELLANT

VERSUS

1. Devidasrao s/o Sheshraoji Umale
(since deceased) through legal representatives :
 - 1-A] Smt. Shobna Devidas Umale,
Aged 61 years, Occ. Household,
 - 1-B] Shantanu Devidasrao Umale,
Aged 32 years, Occ. Education

Both R/o. Maharashtra Colony,
Morshi, Tq. Morshi, District Amravati
 - 1-C] Sau. Pallavi Ravindra Adhau,
Aged 42 years, Occ. Household,
R/o. Shreyash Colony, Amravati,
Tq. and District Amravati
 - 1-D] Sau. Vallari Nilesh Raut,
Aged 38 years, Occ. Household,
R/o Rukmini Nagar, Amravati,
Tq. and District Amravati
2. Mohd. Mumtaz Mohd. Jamair,
Aged about 44 years, Occ. Driver/Owner,
of TATA Suo No.MH-20/D/2272
R/o. Chilam Chhavani, University Road,
Camp, Amravati,
Tq. and District Amravati

3. Shri Pravin P. Zawar,
Age Major, Occ. Not known,
R/o Chitra Chowk, Amravati
Tq. and District Amravati

...RESPONDENTS

Shri D.N. Kukday, Advocate for the appellant.
Shri Nilesh B. Raut, Advocate for the respondents.

CORAM : **URMILA JOSHI-PHALKE, J.**
RESERVED ON : **JANUARY 19, 2023.**
PRONOUNCED ON : **MARCH 24, 2023.**

JUDGMENT :

Heard finally with the consent of learned Counsel for the parties.

2. Present appeal is preferred by the appellant against the judgment and award passed by the Member, Motor Accident Claims Tribunal, Amravati in MACP No.373/2010 by which the Claim Petition of the claimant is allowed and the compensation was granted to the claimants at the tune of Rs.20,19,254/-.

3. This appeal is presented by the Insurance Company challenging the judgment and award. (Parties shall hereinafter referred as per their original nomenclature in the claim petition).

4. Brief facts of the case which are necessary for the disposal of the appeal are as under :

A] On 26/07/2009, at about 4.45 pm the petitioner was riding his bike bearing No.MH-27-AG-5766. When he reached near Morshi police station, at the relevant time one TATA Sumo bearing No.MH-22-D-2272 driven by its driver in a rash and negligent manner and came toward wrong side and dashed against the bike of the petitioner. Due to the severe dash, petitioner sustained grievous injuries. As per contention of the claimants, the said accident took place due to the rash and negligent driving of the TATA Sumo driver who has driven it in a rash and negligent manner without observing the traffic rules and regulations. Regarding the said accident, crime was registered against the TATA Sumo driver vide Crime No.136/2009 on 26/07/009 for the offence punishable under Sections 279, 337 and 338 of the Indian Penal Code (hereinafter referred to as 'the IPC' for short).

5. The said offending vehicle is owned by the opponent Nos.1 and 3 and validly insured with opponent No.2. As the said accident took place due to the rash and negligent driving of the offending Sumo driver, therefore, respondent Nos.1 to 3 are jointly and severally liable to pay the compensation to the claimants.

6. It is further the contention of the claimants that due to the severe dash he sustained grievous injuries, immediately he was removed to the Sub-district Hospital, Morshi. He was also treated in a private hospital namely Yadgire Superspeciality and Critical Care Unit, Amravati and then to Central India Institute of Medical Sciences, Nagpur and Sancheti Hospital, Pune. Due to the accidental injuries he sustained 80% permanent disablement. Due to the permanent disablement he lost his earning capacity. At the relevant time of accident he was running a business and was earning Rs.17,650/- per month. As the said accident took place due to the rash and negligent driving of the Sumo driver which is owned by the opponent Nos.1 and 3 and validly insured with opponent No.2 he claimed the compensation from opponent Nos.1 to 3.

7. In response to the notice, opponent No.1 resisted the claim petition by filing written statement vide Exhibit 18. The opponent No.1 has admitted the involvement of the vehicle in the accident. It is further admitted that the accident occurred in front of police station Morshi on 26/07/2009, but denied all other contentions. Alternatively he submitted that the offending vehicle was validly insured with the opponent No.2 – Insurance company and hence Insurance company is liable to pay compensation. The Insurance Company has also resisted the claim of the clamant by filing written statement vide Exhibit 17. The

defence raised by the Insurance Company is that the offending vehicle bearing No.MH-22-D-2272 was not at all involved in the accident and therefore, the Insurance company is not liable to pay the compensation. Besides the said defence, Insurance company has also denied the quantum of compensation claimed by the petitioner and also denied the disability sustained by the claimant.

8. After considering the rival pleadings of the party, the Motor Accident Claims Tribunal (hereinafter referred to as 'the Tribunal' for short) framed the necessary issues. The claimant has adduced the evidence. No evidence is adduced by the Insurance company. In support of the contention, opponent No.1 has also not adduced any evidence. Besides the oral evidence, claimant further relied upon the police papers i.e. final report (charge-sheet), various statements, injury certificate, disability certificate, driving license of the Sumo driver and registration certificate of the vehicle, insurance policy, etc. On the basis of the evidence adduced by the claimant and documentary evidence, the Tribunal held that the claimant is entitled to receive the compensation and awarded the compensation @ Rs.21,79,544/- along with interest @ 8% per annum from the date of petition.

9. Being aggrieved and dissatisfied with the judgment and award, present appeal is preferred by the Insurance company on the

ground that the Tribunal has erroneously held that the claimant has suffered the injuries due to the dash by TATA Sumo bearing No.MH-22-D-2272. The Tribunal also erroneously held that the vehicle TATA Sumo MH-22-D-2272 was involved in the accident. In fact, the Tribunal ought to have consider that the statements of the eye-witnesses were recorded after lapse of 10 months and the said statements are not believable. It speaks at volumes about the reliability of the said version. The amount of compensation awarded by the Tribunal is also exorbitant. In absence of any evidence and hence, the judgment and award passed by the Tribunal is liable to be quashed and set aside.

10. Heard Shri Kukday, learned Counsel for the appellant-Insurance company. He submitted that the involvement of the vehicle is not at all proved. The First Information Report was lodged against the unknown vehicle. The Investigating officer is not examined by the claimant to show that on what basis he came to the conclusion that the TATA Sumo bearing No.MH-22-D-2272 is involved in the accident. He further submitted that the witness i.e. PW-2 examined by the claimant who admitted that his statement was recorded after 10 months of the incident. He has not lodged any report, not approached to the police station. He is the brought-up witness. His evidence is not reliable. The claimant has not examined, the investigating officer to prove that the

vehicle was involved in the accident and on what basis he came to the conclusion that the said vehicle is involved in the accident. Thus, the evidence adduced by the claimant is not sufficient to show the involvement of the vehicle in the alleged accident. In addition to that he further submitted that the claimant has placed on record Exhibit 49 – Disability certificate. Said disability certificate was issued on 20/05/2010. Said certificate nowhere shows that he was examined by the Medical officer before issuance of the said certificate. Said certificate is not in the Form-B. No reliance can be placed on such certificate. The compensation awarded is exorbitant one. For all above these grounds, the judgment and award passed by the Tribunal liable to be set aside.

11. On the other hand, Shri Nilesh Raut, learned Counsel for the claimant placed on record his written submissions. He submitted that due to the said accident, claimant had sustained multiple grievous injuries all over the body. The claimant was constrained to stay on a bed due to the accidental injury. He was under treatment for long duration. On perusal of the medical record, the Medical officer of the Government hospital assessed his disability to the extent of 80%. Said disability certificate is issued by the Medical Board consisting Civil Surgeon, Orthopaedic Surgeon and General Medical Officer of the Government hospital. Nothing is on record to show that the claimant has obtained

the said certificate of exorbitant percentage of disability. The Medical reports which are filed on record sufficiently shows that the claimant has received the grievous injuries which resulted into permanent disablement. On the basis of the evidence, the Tribunal has awarded the compensation, therefore, no interference is called for. He further submitted that so far as the involvement of the vehicle in the alleged accident is concerned claimant has examined eye-witnesses. The law only expects the proof on the basis of preponderance of probability. The burden is not on the claimant to prove the facts beyond reasonable doubt. On the basis of statements of eye-witnesses and the admission given by the opponent No.1 in written statement is sufficient to show that the offending vehicle was involved in the accident. Thus, the appeal has no merits and liable to be dismissed.

12. After hearing both the sides, following points arise for my consideration.

- (i) Whether the observation of the Tribunal regarding the involvement of the vehicle in the alleged accident needs any interference?
- (ii) Whether the compensation awarded by the Tribunal is excessive and exorbitant and needs to be modified?

13. It is not in dispute that on 26/07/2009, at about 4.45 pm, the petitioner was riding his bike bearing No.MH-27-AG-5766. When he reached near the Morshi police station at the relevant time one TATA Sumo bearing No.MH-22-D-2272 driven by its driver in a rash and negligent manner and gave dash to the bike of the claimant. Due to the severe dash he sustained grievous injuries which resulted into permanent disablement to the extent of 80%. To substantiate the said contention, claimant has adduced his evidence by stepping into the witness box. He filed affidavit of examination-in-chief vide Exhibit 39 and reiterated the contention as per his pleadings. He testified that on 26/07/2009 at about 4.45 pm when he was proceeding on his bike bearing No.MH-27-AG-5766 he was dashed by the TATA Sumo bearing No.MH-22-D-2272 coming to the wrong side. Due to the severe dash he sustained grievous injuries. As regards the involvement of the offending vehicle in the alleged accident, claimant is cross-examined at length. Admittedly, the owner of the offending vehicle has admitted the involvement of the vehicle in the alleged accident. The defence of the owner of the vehicle is that the claimant was proceeding from the wrong side and therefore, said accident occurred, but claimant has denied the said contention. The claimants is also cross-examined by the learned Counsel of the Insurance company. The claimant has admitted during cross-examination that he is not aware by which vehicle his accident

occurred, because he was unconscious. He also admitted that he is unable to state whether said accident is caused due to the TATA Sumo bearing No.MH-22-D-2272. He also admits that he is not aware about the investigation carried out by the Investigating Officer but he denied that he filed false compensation case against the offending vehicle. Besides the oral evidence of the claimant, claimant has examined one Ajay Keshavrao Pawar vide Exhibit 61 who is the eye-witness of the accident. He testified that in the year 2009 he was serving in Agro Chemicals Company at Pune. On 26/07/2009, he along with one more person came to Salbardi at about 4.30 pm, they were returning from Salbardi to Morshi. When they reached opposite the Morshi police station, TATA Sumo driver gave dash to the Scooty rider. In the said accident, Scooty rider sustained the injuries. They requested the Sumo driver to stop the vehicle but driver has not stopped the vehicle. Thus, sum and substance of his evidence is that the said accident occurred due to the rash and negligent driving of the offending vehicle driver of TATA Sumo bearing No.MH-22-D-2272. During cross-examination he admitted that his statement was recorded after 10 months. He further stated that he was scared and as he is in service he has not filed any report. Police approached to him after 10 months and therefore, this statement was recorded. He denied the contention that the vehicle was not involved in the accident. During cross-examination of the opponent No.1 also he

denied that the said accident took place due to the negligence of the Scooty driver. PW-3 – Pritesh Balasaheb Deshmukh is also an eye-witness of the said incident. He also testified that on 26/07/2009 he went at Salbardi along with his friend by TATA Sumo. While returning at about 4.30 pm to 4.45 pm their vehicle gave dash to the Scooty driver. They requested the driver to stop the vehicle but the driver of the vehicle has not stopped the vehicle. His statement was recorded subsequently. During his cross-examination also he admitted that after the accident they were in the vehicle and as the driver has not stopped the vehicle, they proceeded ahead. During the cross-examination, the suggestion was given to this witness that there was head on collusion between the Scooty and the TATA Sumo. Thus, from this cross-examination it appears that the Insurance company has admitted the involvement of the vehicle in the alleged accident and suggested that the accident took place due to the head on collusion. During the cross-examination of opponent No.1 this witness has denied that driver of the TATA Sumo was not negligent but Scooty driver was negligent. Thus, on the basis of this evidence, it is submitted by the learned Counsel of the claimant that this evidence is sufficient to hold that the vehicle was involved in the accident.

14. On the other hand, Shri Kukday, learned Counsel submitted that the statements of the PW-2 and PW-3 was recorded after 10 months

of the incident. Claimant has not examined the Investigating Officer to explain why the statements are recorded after 10 months. These two witnesses never approached to the police to state that vehicle is involved in the accident. Thus, the main contention of the Insurance company is that insured vehicle has been falsely implicated to claim the compensation.

15. Besides the oral evidence of the claimant and the witnesses, the claimant has also placed on record the police papers. Exhibit 42 is the final report filed by the Investigating officer against the TATA Sumo driver which shows that after recording the statement of relevant witnesses and after due investigation he has filed the charge-sheet against the accused. It is pertinent to note that respondent No.1 is the owner as well as driver of the said vehicle. He admitted the involvement of the said vehicle. No evidence is brought on record or there is no suggestion to the claimant by the Insurance company that in collusion with the opponent No.1 he has filed the claim petition against the offending vehicle and the Insurance company to grab the compensation amount. The sum and substance of the charge-sheet shows that during investigation it revealed to the Investigating officer that initially the FIR was lodged by the brother of the injured namely Ganesh Sheshraoji Umale. Subsequently, during investigation, the supplementary statement

of the informant was recorded. The statements of the eye-witnesses were also recorded and it revealed that TATA Sumo bearing No.MH-22-D-2272 is involved in the accident and therefore, charge-sheet is filed against the TATA Sumo driver. The spot panchnama is at Exhibit 42. As per the spot panchnama alleged accident took place in front of the Morshi police station. As the said panchnama was drawn on 16/05/2010 after lapse of 5 to 6 months nothing incriminating is found on the spot of incident. Though the Investigating officer has recorded the statement of the accused i.e. opponent/respondent No.1 who was driver but said statement is not admissible in the evidence.

16. The dispute is with regard to the involvement of the offending vehicle in the accident. PW-2 and PW-3 in their evidence had clearly stated that at the time of accident, they were travelling in the said offending vehicle. Admittedly, their statement was recorded after 10 months. It is pertinent to note that the people are reluctant to approach to the police station as they are scared of the entire investigation process and they do not want to involve themselves in an unnecessary inquiries. Therefore, the reasons mentioned by the PW-2 that he has not approached to the police station as he was scared is reasonable one. Though the Insurance company disputed the involvement of the insured vehicle, Insurance company has not

examined the driver of the insured vehicle. In fact, the driver of the insured vehicle is the respondent No.1 and he has not disputed the occurrence of the accident. It is not the defence of the Insurance company that the owner and the claimant had come before the Court in collusion. In the written statement also the owner and driver of the offending vehicle admitted the involvement of the vehicle. It is also an admitted position that the driver of the offending vehicle was having valid and effective driving licence. The police papers on record and the oral evidence clearly disclosed that due to the accident occurred on 26/07/2009, the claimant has received the injuries and he was under treatment. There is no reason to discard the evidence of eye-witnesses. It is well settled that the claimants has to establish their case on the touch stone of preponderance of probability. The standard of proof beyond reasonable doubt could not have been applied. It is pertinent to note that the accident occurred in a village wherein the movement of the vehicle is limited. There is no difficulty for the police to investigate and traced the offending vehicle. It is submitted by the Insurance company that this claim petition is filed by showing the offending vehicle only to get the compensation which is unacceptable on the ground that if the claimant wants to make any unlawful gain, he could have set up the case in some other way which is beneficial to him. However, in his evidence he has clearly stated the true facts that he is not aware by which vehicle

the accident occurred. The involvement of the vehicle is revealed through the investigation.

17. The Hon'ble Apex Court in a judgment of ***Bimla Devi and others Vs. Himachal Road Transport Corporation and ors. (2009) 13 SCC 530*** in paragraph No.11, 14 and 15 held as under :

“11. While dealing with a claim petition in terms of Section 166 of the Motor Vehicles Act, 1988, a Tribunal stricto sensu is not bound by the pleadings of the parties; its function being to determine the amount of fair compensation in the event an accident has taken place by reason of negligence of that driver of a motor vehicle. It is true that occurrence of an accident having regard to the provisions contained in Section 166 of the Act is a sine qua non for entertaining a claim petition but that would not mean that despite evidence to the effect that death of the claimant's predecessor had taken place by reason of an accident caused by a motor vehicle, the same would be ignored only on the basis of a post-mortem report vis-a-vis the averments made in a claim petition.”

18. While dealing with a claim petition, in terms of Section 166 of the Motor Vehicles Act, 1988, a Tribunal stricto sensu is not bound by the pleadings of the parties; its function being to determine the amount of fair compensation in the event an accident has taken place by reason of negligence of that driver of a motor vehicle. It is true that occurrence of an accident having regard to the provisions contained in Section 166 of the Act is a *sine qua non* for entertaining a claim petition.

19. Some discrepancies in the evidence of the claimant or claimants witnesses ought to have occurred but the core question before this Court as to whether the offending vehicle TATA Sumo was involved in the accident or not. For the purpose of determining the said issue, this Court is required to apply the principles underlying the burden of proof in terms of the provisions of the Evidence Act, 1872. In a situation of this nature, the Tribunal has rightly taken a view of the matter. It was necessary to be borne in mind that strict proof of an accident caused by a particular TATA Sumo in a particular manner may not be possible for the claimants. The claimants has to merely establish their case on the touch stone of preponderance of probability. The standard of proof beyond reasonable doubt could not have been applied. In the instant case, though the claimant's brother while lodging the report had not mentioned the vehicle number or type of vehicle which caused the accident however, during investigation, the involvement of the vehicle is revealed. Though the Investigating officer has not examined to prove the investigation carried out by him but the evidence on record is sufficient to prove the occurrence of the accident. This Court has also considered this aspect in *Nagma Shamu Dhotre and ors. Vs. Chandrakant Sakharam Talgaonkar 2016 (1) Mh.L.J. 336* wherein also Single Judge of this Court held that the claimants have to establish their case merely on touch stone of preponderance of probability and standard

of proof beyond reasonable doubt could not be applied. In the said judgment also this Court has placed reliance on Bimla Devi (supra) wherein Hon'ble Apex Court observed that the claimants have to establish their case merely on the touch stone of preponderance of probability and standard of proof beyond reasonable doubt could not be applied.

20. Keeping in mind the broad principles laid down by the Apex Court, I am of the opinion that the evidence adduced by the claimants in the present matter is sufficient to hold that the accident is occurred due to the involvement of the vehicle MH-22-D-2272. The evidence of the claimant as well as the evidence of the eye-witnesses PW-2 and PW-3 also sufficiently shows that the said accident took place due to the rash and negligent driving of the offending vehicle TATA Sumo driver bearing No.MH-22-D-2272.

21. The appellant-Insurance company has further challenged the award passed by the Tribunal on the ground that excessive and exorbitant compensation is awarded by the Tribunal. The law regarding the assessment of compensation in case of injured is well settled. A man is compensated for physical injury. He is compensated for the loss, which he suffers as a result of that injury. Due to disability he cannot lead a full life, his inability to enjoy those amenities which depend on freedom

of movement and his inability to earn as much as he used to earn or could have earned. Thus, in calculating the compensation, it is the object of the Tribunal to award an amount which will put the injured person in the same position had he not sustained injury. Though it is true that a money cannot renew a physical frame which has been damaged, the Tribunals are supposed to endeavour in awarding sums which can be said to be just and reasonable compensation. The Tribunal has to strike the balance by considering the actual loss and claimants needs to be compensated adequately. Thus, this is a balancing act. The consideration for the precious human limb cannot be forgotten as it is manifest that no award of money can possibly compensate the injured and renew his battered body. But the sympathy for the victim, an emotional consideration should not come in the vague for analytical and rational assistance by resorting to thinking activity.

22. Thus, the Tribunal is required to determine the damages objectively by removing of speculations or some conjuncture with reference to the nature of disability and its consequences. A victim is not only entitled for the compensation for the permanent disability but also for the pecuniary and other loss which he suffered on account of sustaining such injury. This means that he has to be compensated for his inability to lead a full life, enjoy normal amenities which he would have

enjoyed had he not suffered the injuries and his inability to earn as much as he used to earn or could have earned.

23. Admittedly, in the present case, the claimant has not adduced any medical evidence. The first injury certificate shows that he has sustained the injuries i.e. CLW above left eyebrow, CLW on the middle part of the left leg, multiple abrasion on both the legs and CLW between index ring finger. After the alleged accident, the claimant was treated in various hospitals. The discharge card of Central India Institute of Medical Sciences, Bajaj Nagar, Nagpur shows that the claimant was admitted in the said hospital on 28/07/2009 and discharged on 13/09/2009. Said discharge card is at Exhibit 55/3. During his treatment he undergone the surgery on 29/07/2009, 05/08/2009 and 01/09/2009 as per the diagnosis he had sustained Gr. III B compound, comminuted, segmental fracture, left T/F with Gr.III B compound comminuted fracture left proximal tibia. The history narrated to the hospital is road traffic accident on 26/07/2009 around 4.30 pm. Again he was admitted in the hospital on 15/02/2010 and discharged on 16/02/2010 wherein also the brief history shows that the 55 years male patient was operated for Gr.III B compound comminuted, segmental fracture, left T/F with Gr. III B compound comminuted, fracture, left proximal T/F on 29/07/2009, debridement bone grafting + FC flap (left

leg) on 05/10/2009. Now since two months there is swelling over operated side, and therefore, he was admitted. The Exhibit 55/2 is also discharge card shows that the claimant was admitted in the hospital on 02/10/2009 and discharged on 14/10/2009 wherein also same history is mentioned. Thus, the Exhibit 55/1, 55/2, 55/3 shows that the injured has sustained the Gr. III fracture injuries for which he undergone surgery. Thus, various medical treatment papers which are produced on record shows that he was not only treated in the hospital at Amravati but he was also treated at Sancheti hospital, Pune. Sancheti hospitals indoor patient bill is also on record which shows that he was admitted on 09/03/2010 and discharged on 12/03/2010.

24. The claimant has deposed that after the accident he was taken to the Government hospital at Morshi thereafter he was treated in a private hospital of Dr. Shri Yadgire. He submitted various medical bills on record. He further placed reliance on disablement certificate issued by the medical board which is at Exhibit 49. This shows that he sustained 80% of permanent disablement due to the injuries at his both the lower limbs. He had also produced the license of shop which he was running. The claimant was aged about 55 years at the time of accident. It is pertinent to note that in an advance age it is difficult for a persons to recover from the fracture injuries at early stage and this type of

injuries takes long time to heal. When he sustained the permanent disablement at his both the legs it is very difficult for him even to walk. Admittedly, he has not examined the medical officer who issued the disability certificate. Said certificate which is at Exhibit 59 shows that he approached to the Government hospital i.e. before the Medical board. Medical board on examination observed that he had ancool nonunion of left tibia fibula. He has also sustained the injury on right knee with infected gap and therefore, the medical board has assessed the disability to the extent of 80%.

25. It is vehemently submitted by the learned Counsel Shri Kukday, that in absence of the medical evidence, Tribunal has awarded the compensation at excessive rate. In support of his contention he placed reliance on *Rajesh Kumar alias Raju Vs. Yudhvir Singh and anr. 2008 (6) Mh.L.J. 21* wherein Hon'ble Apex Court has held that the claim petition certificate of 60% disability filed unless author of the certificate examined himself, it was not admissible in evidence. The facts of the cited case shows that the certificate in question in that case was obtained after two years. It is not known as to whether the Civil Surgeon of the hospital treated the appellant. On what basis such certificate was issued two years after the accident took place is not known. The author of the said certificate has not been examined, and therefore, Hon'ble Apex

Court has held that unless the author of the certificate examined himself it was not admissible in evidence. In the present case, the certificate is issued by the Medical board which consists of Civil Surgeon of General Hospital, Orthopaedic Surgeon, Member of a Handicapped board. The certificate shows that it was issued on 28/05/2009 i.e. after six months of the accident and prior to one year of the accident.

26. Shri Raut, learned Counsel placed his reliance on ***Raj Kumar Vs. Ajay Kumar and anr. 2011 (1) T.A.C. 785 (S.C.)*** wherein principles of assessment of the compensation in injury cases is determined. He further placed reliance on ***Rekha Jain Vs. National Insurance Co. Ltd. 2013 (3) T.A.C. 747 (S.C.)***, ***Dr. Dattatraya Laxman Shinde Vs. Nana Raghunath Hire and ors. 2013 ACJ 474*** and submitted that in view of the judgment of the Hon'ble Apex Court *Raj Kumar* (supra) as the disability certificate is issued by the medical board duly constituted it can be relied upon. There is no reason to disbelieve the said certificate.

27. The principles of determination of loss of future earnings of the injured with reference to extent of his personal disability is explained by the Hon'ble Apex Court in the case of *Raj Kumar* (supra). The principles laid down by the Hon'ble Apex Court are that the provision of the Motor Vehicles Act makes it clear that the award must be just which

means that compensation should to the extent possible, full and adequately restored the claimant to the position prior to the accident. The heads under which compensation is awarded in personal injury cases are pecuniary damages and non-pecuniary damages. In routine personal injury cases, compensation will be awarded only under the head i.e. expenses relating to treatment, hospitalization, medicines, transportation, nourishing food, and miscellaneous expenditure, loss of earnings during the period of treatment, loss of future earnings, on account of permanent disability and future medical expenses. Now pecuniary damages are awarded for pain and suffering and as a consequences of injuries, loss of amenities, loss of expectation of life etc.

28. Hon'ble Apex Court in the case of Raj Kumar (supra) held that the provision of Motor Vehicles Act makes it clear that the award must be just, which means that compensation should, to the extent possible, fully and adequately restore the claimant to the position prior to the accident. The object of awarding damages is to make good the loss suffered as a result of wrong done as far as money can do so, in a fair, reasonable and equitable manner. The Court or Tribunal shall have to assess the damages objectively and exclude from consideration any speculation or fancy, though some conjecture with reference to the nature of disability and its consequences, it inevitable. A person is not

only to be compensated for the physical injury, but also for the loss which he suffered as a result of such injury. This means that he is to be compensated for his inability to lead a full life, his inability to enjoy those normal amenities which he would have enjoyed but for the injuries, and his inability to earn as much as he used to earn or could have earned. It is further held by the Hon'ble Apex Court that 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. The Hon'ble Apex Court

while summarizing the principles regarding the grant of compensation in injury cases also observed that 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. The Tribunal may also keep in view the first schedule to the Workmen's Compensation Act, 1923 which gives some indication about the extent of permanent disability in different types of injuries, in the case of workmen. If a Doctor giving evidence uses technical medical terms, the Tribunal should instruct him to state in addition, in simple non-medical terms, the nature and the effect of the injury. If a doctor gives evidence about the percentage of permanent disability, the Tribunal has to seek clarification as to whether such percentage of disability is the functional disability with reference to the whole body or whether it is only with reference to a limb. The Hon'ble Apex Court

further observed that the Tribunal should also act with caution, if it proposed to accept the expert evidence of doctors who did not treat the injured but who give 'ready to use' disability certificates, without proper medical assessment. There are several instances of unscrupulous doctors who without treating the injured, readily giving liberal disability certificates to help the claimants. But where the disability certificates are given by duly constituted Medical Boards, they may be accepted subject to evidence regarding the genuineness of such certificates. The Tribunal may invariably make it a point to require the evidence of the Doctor who treated the injured or who assessed the permanent disability. Mere production of a disability certificate or Discharge Certificate will not be proof of the extent of disability stated therein unless the Doctor who treated the claimant or who medically examined and assessed the extent of disability of claimant, is tendered for cross-examination with reference to the certificate. If the Tribunal is not satisfied with the medical evidence produced by the claimant, it can constitute a Medical Board and refer the claimant to such Medical Board for assessment of the disability. In this case, the Tribunal acted on the disability certificate but the Insurance company raised the issue about the acceptability of the said certificate. It is pertinent to note that the accident occurred on 26/07/2009, the disability certificate is issued on 20/05/2010. The Insurance company has not raised any objection while exhibiting the

said document.

29. The Insurance company has also not raised the issue of genuineness of the said certificate before the Tribunal. Thus, the certificate is not contested by the Insurance company, and therefore, it was marked as Exhibit by consent thereby dispensing with the oral evidence. The Hon'ble Apex Court in Raj Kumar (supra) has also dealt with the said issue and held that the solution lies in recognizing the valuable time of Doctors and accommodating them. Firstly, efforts should be made to record the evidence of the treating Doctors on commission, after ascertaining their convenient timings. Secondly, if the Doctors attend the Tribunal for giving evidence, their evidence may be recorded without delay, ensuring that they are not required to wait. Thirdly, the Doctors may be given specific time for attending the Tribunal for giving evidence instead of requiring them to come at 10.30a.m. or 11.00 a.m. and wait in the Court Hall. Fourthly, in cases where the certificates are not contested by the respondents, they may be marked by consent, thereby dispensing with the oral evidence. These small measures as also any other suitable steps taken to ensure the availability of expert evidence, will ensure assessment of just compensation. In the present case, the record of the Tribunal nowhere shows that the execution of the certificate was at any point of time was

objected by the Insurance company. It appears that the certificate was exhibited with the due consent of the Insurance company and therefore, the medical officer was not examined. The record of the Tribunal nowhere shows that at any point of time the Insurance company has objected the genuineness of the said certificate. The tribunal has acted on the disability certificate as it was issued by the medical board of the Government hospital, Amravati. Admittedly, the accident occurred in Morshi, District Amravati. The claimant appeared before the medical board and medical board has issued the said certificate. The certificate has been issued by the Civil Surgeon, Orthopaedic Surgeon on the assessment made by the medical board and therefore, the medical certificate is correctly appreciated by the Tribunal and accepted as its genuineness was never doubted by the Insurance company.

30. Learned Counsel for the claimant placed reliance on the Apex Court judgment in Rekha Jain (supra) wherein also Hon'ble Apex Court has held that The High Court has gravely erred both on facts and in law in interfering with the impugned judgment and award of the Tribunal in reducing the pecuniary damages awarded towards medical expenses. It is further held by the Hon'ble Apex Court that the factual aspects are stated in unequivocal terms in the statement of the evidence, and she has also referred to the documents such as bills, receipts and vouchers

obtained by her from various medical stores on the basis of the prescriptions of the doctors who have treated her. In relation to the said documents, the learned Counsel for the Insurance Company has never objected for making them exhibits. The findings of the Tribunal ought not to have interfered with.

31. Learned Counsel for the claimant further placed reliance on the judgment of this Court in the case of Dr. Dattatraya Laxman Shinde (supra) wherein this court has considered the application of the Evidence Act to the Motor Accident Claims Tribunal. It is held by this Court that the Tribunal is not bound by strict rules of evidence. Claimant who sustained injuries in an accident and has become paraplegic produced voluminous original documents such as bills, vouchers, etc. Insurance company of the offending vehicle wanted that large number of witnesses should be examined to prove the documents. Claimant in his evidence, has made reference to all the bills and vouchers. No specific case has been made out that documents were fabricated. Whether Tribunal ought to have taken into consideration all these bills and vouchers and it is held that yes. In the said judgment also this Court has referred the judgment of Raj Kumar Vs. Ajay Kumar and anr.

32. Thus in the present case, the Tribunal has assessed the compensation on the basis of the evidence. The Tribunal after

appreciating the oral and documentary evidence led by the claimant awarded the compensation by observing that the claimant has deposed that he was taken to the Government hospital at Morshi thereafter he took treatment in various hospitals. The permanent disablement certificate issued by the medical board Exhibit 49 also shows that he has sustained 80% of the permanent disablement due to the injuries at his both lower limbs. The claimant has also produced the licence of his shop. The medical evidence sufficiently shows that he has sustained permanent disablement at his both legs. The claimant was 55 years of age at the time of accident. In the advanced age it is difficult to come out from the said injuries easily. The Tribunal has also taken into consideration the income tax return which are filed on record at Exhibit 54. The income tax return of the assessment is of the year 2009-2010 i.e. financial year of 2008-2009 which was showing his income of to be Rs.1,07,850/- from shop and Rs.48,750/- from his field. Thus, on the date of accident, the income of the claimant was considered as Rs.1,20,000/- from his shop. The petitioner has not filed any income tax return subsequent to his accident. The petitioner – claimant has submitted the income tax of the year 2007-2008 which shows his income for the year 2007-2008 to the tune of Rs.1,07,850/- from shop and Rs.48,750/- from the agricultural field. He further claimed that he had earned Rs.1,45,480/- from his shop and Rs.65,780/- from agricultural

field. Even if it is considered that this income was shown to get more compensation then also after considering that he was businessman running a shop and by applying the guess work his income can be taken into consideration as Rs.1,20,000/- per annum and Rs.50,000/- per annum from his agricultural field. So far as loss of income from his agricultural field is concerned, the agricultural land would remain with him as it is, only he has to incur the expenses in the manner of supervisory capacity as the land will remain with him as it is. If this evidence is taken into consideration there is no dispute that the injured has sustained the permanent disability. As observed by the Hon'ble Apex Court, the same permanent disability may result in different percentage of loss of earning capacity in different person depending upon the nature of profession, occupation or job, age, education and other factors. Admittedly, the claimant was earning from his agricultural field. Though it is considered that the claimant will not suffer from deprivation of the income as the land still remains with him however, the issue involved is whether the claimant is in position to carry out the agricultural operation in future. The injuries sustained by the claimant was on his right knee with infected gap and nonunion of fracture of left tibia/fabula. The injuries sustained by the claimant is grievous in nature. The disability certificate on record shows that he had sustained the injury on his right knee. There are restrictions on the movement of

left limb as well as right limb. Though it is held that he will not lose the income as agricultural land will remain with him. However, he has to appoint somebody to carry out agricultural operation and therefore he has to incur the expenses towards the person who is appointed by him. This aspect is rightly considered by the Tribunal and held that the claimant was earning Rs.50,000/- per month from his agricultural field. Thus, his total income might be Rs.1,70,000/- per annum at the time of accident. However, there can be a profit of 20% from the shop and 50% profit even from the agricultural field then the petitioner can earn Rs.24,000/- per annum from his shop by letting it and further can earn Rs.25,000/- per annum from his field thus, total Rs.49,000/- per annum. The Tribunal has rightly considered that the income of the claimant by deducting the income of Rs.49,000/- from Rs.1,70,000/-. The Tribunal has considered the annual income of the claimant as Rs.1,21,000/-. Considering the age of the claimant multiplier of 9 was applied by the Tribunal and loss of income was ascertained as Rs.10,89,000/-. Thus, the petitioner submitted bills of Rs.10,58,125/-. The claimant is entitled to receive the said amount also. The learned Tribunal has rightly considered the quantum by taking into consideration the income at the time of accident as well as future income and rightly taken into consideration the yearly income of the claimant.

33. I do not find any reason to interfere with the said compensation amount. Looking to the record, it appears that the petitioner was earning his income from the shop which he was running. As he has sustained the 80% of the disability and there are restrictions on the movement thus, the entitlement of the claimant was considered by the Court by taking into consideration loss of income, pain and sufferings, medical bills, etc.

34. In my considered view, the Tribunal has rightly considered the principles laid down in Raj Kumar (supra) and awarded the compensation. Thus, there is no substance in the contention of the appellant-Insurance company that the compensation awarded by the Tribunal is exorbitant and excessive one. Thus, I hold that the appeal has no merit and liable to be dismissed. Accordingly, I answer the point Nos.1 and 2 in the negative and the appeal deserves to be dismissed.

35. The appeal is dismissed accordingly.

(URMILA JOSHI-PHALKE, J.)

**Divya*