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

FIRST APPEAL NO.322 OF 2009

Hamidkhan Deulatkhan, aged about 43 years,
Occ. Nil, R/o Ashti, Dist. Wardha.

... APPELLANT

VERSUS

1. Abdul Matin Sheikh Nazim, aged about Adult, Occ. Driver, r/o Peth Ahamadpura, Tq. Ashti, Dist. Wardha.

2. Mohamad Jakiriya Abdul Quadir Ansari, aged about Adult, Occ. Trax Driver, r/o Peth Ahamadpura, Tq. Ashti, Dist. Wardha.

3. The United India Insurance Co. Ltd., through Branch Manager, Wardha Branch, Wardha.

4. The New India Assurance Co. Ltd., through Branch Manager, Wardha Branch, Wardha.

... RESPONDENTS

Shri B.D. Vora, Advocate for the appellant.
Shri C.A. Anthony, Advocate for respondent no.3.
Ms. S.H. Bhatia, Advocate for respondent no.4.

CORAM : PRAVIN S. PATIL, J.
DATE : 14.10.2025.

ORAL JUDGMENT :

1. Heard.

2. By way of this appeal, the Appellant who is original claimant, seeks enhancement to the compensation amount which is awarded by the Motor Accident Claims Tribunal vide it's judgment dated 23/02/2005 in Claim Petition No.109/2002.

3. According to Appellant, he was doing fruit business. His monthly income was Rs.7000/- per month. At the time of accident, he was 38 years old. On 03.10.2000, while he was going by motorbike, as a pillion rider, the offending vehicle hit the bike, thereby he received permanent disability by way of fracture of Tibia & fibula, upper 1/3rd leg external firaction after debridement wound. The offending vehicle was duly insured with respondent no.3 Insurance Company on day of accident. Appellant claimed compensation of Rs.3,00,000/-before the Tribunal.

4. Learned Claim Tribunal by the impugned judgment and order awarded the compensation of Rs.70,000/- to Appellant by holding that Appellant failed to prove his monthly income of Rs.7000/- and on the basis of medical certificate the maximum inefficiency to his movement was assessed to 5%. The Tribunal held that, Appellant produced two medical certificate issued in same year. One certificate dated 20.06.2003 (Exhibit 47), shows disability of 15% and other certificate dated 17.10.2003 (Exhibit 64) shows disability of 40%. Hence relied the certificate dated 20.06.2003, which shows disability to left leg.

5. Appellant states that, learned Tribunal has committed an error by not considering his disability in proper manner. He has relied upon the Exhibit 64 i.e. medical disability certificate showing his disability of 40%. He further stated that being a fruit merchant his monthly income ought to have considered at least Rs.7000/- per month. But nothing was considered properly in the matter. Therefore, he seeks enhancement to the compensation awarded by the Tribunal.

6. Per contra, learned Counsel appearing for Insurance Company stated that the Company contested the claim petition before the Tribunal on merits. The permanent disability, medical expenses, loss in business was specifically denied. The Appellant therefore, was required to established on record his monthly income and permanent disability caused to him by bringing cogent evidence on record. But nothing was proved by appellant. His whole claim is based upon surmises and conjectures. It is further stated that the Tribunal has rightly assessed his disability on the basis of medical evidence available on record. Therefore, according to him, there is no illegality in the judgment and order passed by the Tribunal in the matter.

7. I have heard both the learned Counsel at length. Perused the record and also gone through the case laws relied upon by both the parties in the matter.

8. At the outset it will be justified to understand the law laid down by Hon'ble Supreme Court of India in the case of ***Raj Kumar vs. Ajay Kumar and anr. 2011(1) SCC 343***, wherein general principles relating to compensation in injury cases are laid down. The relevant paras of this judgment are reproduced as under :

> *"6.Disability refers to any restriction or lack of ability to perform an activity in the manner considered normal for a human-being. Permanent disability refers to the residuary incapacity or loss of use of some part of the body, found existing at the end of the period of treatment and recuperation, after achieving the maximum bodily improvement or recovery which is likely to remain for the remainder life of the injured. Temporary disability refers to the incapacity or loss of use of some part of the body on account of the injury, which will cease to exist at the end of the period of treatment and recuperation. Permanent disability can be either partial or total. Partial permanent disability refers to a person's inability to perform all the duties and bodily functions that he could perform before the accident, though he is able to perform some of them and is still able to engage in some gainful activity. Total permanent disability refers to a person's inability to perform any avocation or employment related activities as a result of the accident. The permanent disabilities that may arise from motor accidents injuries, are of a much wider range when compared to the physical disabilities which are enumerated in the Persons with Disabilities (Equal opportunities, Protection of Rights and Full Participation) Act, 1995 (Disabilities Act' for short). But if any of the disabilities enumerated in section 2(1) of the Disabilities Act are the result of injuries sustained in a motor accident, they can be permanent disabilities for the purpose of claiming compensation.*
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> *12. 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 (from a panel maintained by it in consultation with reputed local Hospitals/Medical Colleges) and refer the claimant to such Medical Board for assessment of the disability.

13. We may now summarise the principles discussed above:

(i) All injuries (or permanent disabilities arising from injuries), do not result in loss of earning capacity.

(ii) The percentage of permanent disability with reference to the whole body of a person, cannot be assumed to be the percentage of loss of earning capacity. To put it differently, the percentage of loss of earning capacity is not the same as the percentage of permanent disability (except in a few cases, where the Tribunal on the basis of evidence, concludes that percentage of loss of earning capacity is the same as percentage of permanent disability).

(iii) The doctor who treated an injured-claimant or who examined him subsequently to assess the extent of his permanent disability can give evidence only in regard the extent of permanent disability. The loss of earning capacity is something that will have to be assessed by the Tribunal with reference to the evidence in entirety.

(iv) The same permanent disability may result in different percentages of loss of earning capacity in different persons, depending upon the nature of profession, occupation or job, age, education and other factors."

9. In the present appeal, from the evidence/deposition, it is clear that at the time of accident appellant was doing fruit business and owner

of agricultural land. Therefore, I am of the opinion that considering this fact, his monthly income ought to have been considered to Rs.6000/- per month.

10. In respect of medical evidence, it is clear from the record that appellant was indoor patient from period 03.10.2000 to 28.10.2000 (Exhibit 38). The medical certificate issued by Civil Hospital, Wardha dated 20.06.2003 (Exhbit 47) shows disability of 15%. Then second certificate of Civil Hospital, Wardha dated 17.10.2003 (Exhibit 64) shows disability 40%. The bare perusal of certificate dated 17.10.2003 showing 40% disability seems to be not in consonance with the explanation given by the Civil Hospital. Furthermore, Dr.Vilas Dhage who was examined in support of certificate dated 17.10.2003 (Exhibit 64) stated that without obtaining fresh X-ray of the injury and without referring to handicapped board in Government Hospital, Wardha, issued the certificate. Hence, I find that reasoning recorded by the Tribunal in respect of functional disability of appellant, considering his nature of work up to 5% is justified in matter.

11. While considering the quantum of compensation, it will have to be noted down that appellant was 38 years old, when accident took place. As per the law laid down by the Hon’ble Supreme Court of India in the case of ***National Insurance Company Limited v. Pranay Sethi and ors. (2017) SCR 100***, the appellant entitlement for compensation is as under :

	Monthly Income of the Appellant	Rs.6000/-
	40% loss towards future prospect	Rs.2400/-
1.	Annual income with future interest (6000+2400 x 12) =	Rs.1,00,800/-
	Percentage of disability 5%	Rs.5040/-
2.	Add Multiplier 15 (Rs.5040 x 15) =	Rs.75,600/-.
3.	Medical expenditure	Rs.25,000/-
4.	Pain and suffering	Rs.10,000/-
5.	Future medical expenses	Rs.20,000/-
	Total	Rs.1,30,600/-

12. According to me, abovementioned compensation is just and fair in the facts and circumstances of the matter.

13. Hence I proceed to pass the following order :

(a) The Appeal is partly allowed.

(b) The Judgment and order of the Motor Accident Claims Tribunal, Wardha in Claim Petition No. 109/2002 dated 23.02.2005 is modified to the extent that appellant is entitled for compensation of Rs.1,30,600/- (inclusive of no fault liability).

(c) Rest of the judgment and order of the Motor Accident Claims Tribunal, Wardha dated 23.02.2005 in Claim Petition No.109/2002 is confirmed.

(d) Respondent no. 3 Insurance Company is directed to deposit the enhance amount within a period of 3 months.

(e) Appellant is permitted to withdraw the same after deposit of enhanced amount by respondent no.3.

(PRAVIN S. PATIL, J.)

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