IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

FIRST APPEAL NO.381 OF 2010

Devidas s/o Kashiram Girhe,
Aged about 55 years,
Occupation-Service,
R/o Wathurkar Nagar,
Adarsh Colony, Akola,
Tq. & Distt. Akola. .. Appellants
(Ori. Claimant on R.A.)

..Versus..

1. Kishor s/o Pandurang Pradhan,
Age about Adult,
Occ. Driver,
R/o. C/o. Girish Mohanlal Kothari,
Vidya Nagar, Murtizapur Road,
Akola, Tq. & Distt. Akola,
Driver of Tipper No.MTV 2756.

2. Girish s/o Mohanlal Kothari,
Aged about Adult,
Occ. Business,
R/o. Vidya Nagar, Murtizapur Road,
Akola, Tq. & Distt. Akola,
(Owner of Tipper No.MTV 2756)

3. I.C.I.C.I. Lombard General Insurance
Company Limited, Akola Branch Office,
Above State Bank of Indore, Opp. Purti
Bazar, Station Road, Akola,
Tq. and Distt. Akola. .. Respondents
(Ori. Non-Applicants Nos.1 to3
Respectively)

Shri C.A. Joshi, Advocate for Appellant.
None for Respondent Nos.1 and 2 though served.
Mrs. Ashwini S. Athalye, Advocate for Respondent No.3.

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CORAM : PRAVIN S. PATIL, J.
RESERVED ON : 14.11.2025.
PRONOUNCED ON : 27.11.2025.

JUDGMENT

1. The appellant, who is an original claimant, challenged the judgment and order dated 10.12.2009 passed by the Motor Accident Claims Tribunal, Akola in Motor Accident Claim Petition No.240/2008 and thereby seeking the modification of the judgment to the extent that additional compensation of Rs.4,25,000/- be awarded to the appellant along with interest at the rate of 12% per annum from the date of filing of petition before the claim Tribunal.

2. The perusal of the order of the learned MACT shows that the learned Tribunal has hold liable to the driver of the offending vehicle as well as the appellant as equally negligent in the accident and, therefore, assessed the responsibility and liability as 50-50 between them. According to the learned Tribunal it was a case of contributory negligence.

3. In respect of compensation, the learned Tribunal has considered the hospital charges, medical charges, damage caused to the vehicle of applicant, pain and suffering and thereby held that the appellant is entitled for a compensation of Rs.75,000/-. However, considering it as a contributory negligence, the appellant held to be entitled for 50% of the amount awarded by the Tribunal.

4. After perusal of factual position, issues which falls for consideration, whether it is a case of contributory negligence and secondly the compensation awarded by the learned Tribunal is just and fair in the present appeal.

5. In the present appeal, there was no eyewitness examined to state as to who was responsible in the accident dated 29.11.2007 though the accident took place in front of Mahabeej Office, Akola at 10.30 am which is busy traffic road especially at office hours. In the said accident, the appellant sustained a fracture injury to his left leg near thigh, injury over right wrist, left ear, cheeks and fracture to his nose and ribs.

6. In view of this factual position, the learned Tribunal has relied upon the police case papers and on the basis of spot panchanama draw the conclusion that driver of offending vehicle and the present appellant were equally responsible for accident and thereby fixed the responsibility and liability of 50-50 % between them.

7. In view of this factual aspect, I have again perused the spot panchanama. The spot panchanama clearly shows that same was recorded on the basis of person who was the eyewitness to the accident. In the spot panchanama, it is specifically recorded that the road on which accident was occurred is near about 27 ft. width and having 3 x 3 footpath. The tipper (truck) at the relevant time was trying to over take one running truck and appellant bike on his left side, as such due to rash and negligent driving of truck accident occurred. Therefore, considering the spot panchanama, I am of the opinion that the learned Tribunal has recorded incorrect findings in respect of occurrence of the accident and by holding the appellant responsible and liable for the same. In my view, considering the spot panchanama, the appellant was not

negligent and, therefore, it it not a case of contributory negligence.

8. It is further pertinent to note that if the respondent-insurance company came with a defence that it is a case of contributory negligence, the least expected in the matter is that they should examine the independent person to justify their defence. In the present case, admittedly, the accident took place at about 10.30 am to the place where many people were available and as same can be ascertained from the fact that the spot panchanama was prepared on the basis of statement of eyewitness. However, no one has been examined by the insurance company to prove their defence.

9. Furthermore, in the present facts and circumstances of the case, appellant entered into witness box and stated that he was not responsible for accident, but nothing adverse has been elicited from his cross-examination at the instance of the respondents in the matter. Therefore, in absence of any concrete evidence, the learned Tribunal has wrongly hold that it is a case of contributory negligence.

10. In the present case, the appellant has claimed that he sustained 15% permanent disability in the accident, and to prove this fact, he had examined Dr. Rathi, with whom he was admitted after the accident from period 29.11.2007 to 18.12.2007 i.e. for a period of three weeks. In this regard, it will be necessary to note that, as per law laid down by the Hon'ble Supreme Court of India, the court has to first ascertain all the activities of the claimant which was carrying before the accident and what he could not do as a result of permanent disability which is relevant for awarding compensation to the claimant. So also it is necessary to ascertain his avocation, profession and nature of work, his age at the time of accident and lastly whether any disability caused loss in the earning of the claimant. In the background of this factual and legal position, it will be relevant to refer judgment of the Hon'ble Supreme Court of India in the case of ***Atul Tiwari .vs. Regional Manager, Oriental Insurance Company Limited, reported on (2025) 3 SCC 6***, wherein, the Hon'ble Supreme Court has observed in para 31 as under :

> *"31. This Court in Raj Kumar v. Ajay Kumar[11] has explained the process of considering the factors while assessing the amount of*

compensation in case of permanent disability caused to the victim of motor accident. It has also discussed the process of ascertainment of the effect of the permanent disability on the actual earning capacity of the victim. The relevant paragraphs are enumerated below for perusal. (SCC pp. 349-50, paras 10-13)

"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 permanent 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 the 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. and Yadava Kumar v. National Insurance Co. Ltd.)*

12. Therefore, 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.*

13. Ascertainment of the effect of the permanent disability on the actual earning capacity involves three steps. The Tribunal has to first ascertain what activities the claimant could carry on in spite of the permanent disability and what he could not do as a result of the permanent disability (this is also relevant for awarding compensation under the head of loss of amenities of life). The second step is to ascertain his avocation, profession and nature of work before the accident, as also his age. The third step is to find out whether: (i) the claimant is totally disabled from earning any kind of livelihood, or (ii) whether in spite of the permanent disability, the claimant could still effectively carry on the activities and functions, which he was earlier carrying on, or (iii) whether he was prevented or restricted from discharging his previous activities and functions, but could carry on some other or lesser scale of activities and functions so that he continues to earn or can continue to earn his livelihood."

11. Now reverting back to the facts of the present case, the appellant has relied upon two certificates issued by Dr. Tarun Rathi, who is an Orthopedic, dated 19.5.2008 (Exh.35) and 11.5.2009 (Exh.42). Both the certificates show

that the claimant caused permanent disability of 15% of lower limb.

12. The appellant has examined said Dr. Tarun Rathi before the claim Tribunal and he has only stated that the appellant was hospitalized for a period 29.11.2007 to 18.12.2007 i.e. a period of three weeks. He has not explained as to why he has issued two certificates to the appellant and further did not disclose as to how the said permanent disability affected the regular work of the appellant and cause loss in his regular income in the matter.

13. In the cross-examination of the appellant, it is established on record that he is working as a Sectional Engineer in the Irrigation Department. At the time of accident it is stated that, he was working in the Irrigation Department without disclosing his designation. However, the judicial notice can be taken of the fact that a Sectional Engineer in the Irrigation Department is a promotional post and, therefore, it can be inferred that during this period his work was not effected and, therefore, he got promotion on the basis of his merit-cum-seniority as a Sectional Engineer in the Irrigation Department.

Hence, there is more reason to hold that there was no functional disability caused to the appellant in the matter.

14. It is further pertinent to note that though there was no further financial loss caused to the appellant in the matter, however, the fact remains that due to accident, the appellant was hospitalized for certain period and he was required to do necessary expenditure towards hospitalization and medicines. Hence, according to me, appellant is entitled for compensation on following heads :

1)	Medical expenses towards hospitalization	:	Rs.50,000/-
2)	Loss of earning during the period of treatment	:	Rs.10,000/-
3)	Pain and Suffering	:	Rs.25,000/-
4)	Damage to vehicle	:	Rs.15,000/-
		Total:	Rs,1,00,000/-

Hence, for the aforesaid reasons, the impugned judgment and award needs modification as under :

<u>O R D E R</u>

(i) The appeal is partly allowed.

(ii) It is held that the appellant was not negligent in the accident and, therefore, no responsibility and liability of payment of compensation of 50% can be saddled on the appellant.

(iii) The respondents are jointly and severally responsible to pay the entire compensation to the appellant.

(iv) The appellant is entitled for the compensation of Rs.1,00,000/- along with interest at the rate of 7.5% per annum from the date of application till the realization of the amount.

(v) The Respondent No.3-Insurance Company is directed to deposit the enhanced compensation amount to the Registry of this court within a period of four months.

(vi) The appellant is entitled to withdraw the same after the deposit of amount before this court by the respondent No.3-Insurance Company.

(vii) Needless to mention that amount paid or deposited earlier be deducted from enhanced compensation amount.

(Pravin S. Patil, J.)

Gulande