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

FIRST APPEAL NO. 636 OF 2010

Prakash Nagorao Gedam
age : 35 years, Occ : Gurakhi
R/o. Umari, Tah. Kelapur,
Dist. Yavatmal
.. Appellant

Versus

1. Santosh Madhukar Chavhan,
age : 30 years, Occ : driver & owner
R/o. Umari Road, Tah. Kelapur,
Dist. Yavatmal

2.. The National Insurance Co. Ltd.
Through its Branch Manager,
The National Insurance Co.Ltd.,
Office at Samra Complex,
Jaistambh Chowk, Amravati
.. Respondents

Mr. B.D. Vora, Advocate for appellant.
Mr. Y.S. Nikam, Advocate h/f Mr. N.B. Bargat, Advocate for respondent No.1.
Mr. Ashish Pawnikar, Advocate for respondent No.2.

CORAM : ABHAY J. MANTRI, J.

DATED : AUGUST 06,2025

ORAL JUDGMENT

(1) The original petitioner/appellant, being dissatisfied with the judgment and award dated 30/11/2009 passed by the Member, Motor Accident Claims Tribunal, Pandharkawada, Kelapur (hereinafter referred to as ***'the Tribunal'***) whereby the petition was partly allowed and compensation of Rs. 25,000/- was granted, has preferred this appeal for enhancement of the compensation amount.

(2) The appellant was working as a shepherd/cowboy. On 05/07/2006, after grazing the buffaloes, he was returning to his home and at Umari Road, one Mini-door bearing registration No. MH-29-4983 came from Saikheda and was going towards Wani in a rash and negligent manner, and gave a dash to him, and the accident occurred. He had sustained a fracture to his left leg and other injuries; therefore, he was taken to the Christian Hospital, Umari and from there, he was shifted to the Government Hospital at Yavatmal. He was admitted to the Government Hospital from 06/07/2006 to 16/07/2006, where his left leg was operated on. Thereafter, he was taking further treatment from Dr. Dabhere at Yavatmal as an out-door patient. He spent around Rs. 25000/- to 30000/- for medical treatment.

(3) Mr. Arvind Nagorao Gedam lodged the report about the said accident to Pandarkavda Police Station, District Yavatmal, on the same day, which was registered vide Crime No.137/2006 for the offence punishable under Sections 279 and 337 of the Indian Penal Code, 1860 IPC.

(4) The appellant was working as a shepherd/cowboy and was earning Rs. 100/- per day, i.e. an amount of Rs. 3000/- p.m. Due to the accident and fracture of his left leg, he finds it difficult to walk and is unable to do his routine work. The accident occurred due to the negligent driving of the driver of the Mini-door.

(5) Respondent No.1 is the owner-cum-driver of the said Mini-door was insured with respondent No.2 Insurance Company, and therefore, both the respondents are jointly and severally liable to pay compensation to the appellant. Therefore, he has filed the claim petition before the Tribunal for claiming compensation of Rs. 1,50,000/-.

(6) Despite service of summons, none appears for respondent No.1 and therefore, the matter was proceeded ex parte against him.

(7) Respondent No.2 Insurance Company filed a written statement and thereby denied the occurrence of the accident and injuries sustained by the appellant. It also denied that the appellant was admitted to the hospital from 06/07/2006 to 16/07/2006 and that his left leg was operated on. It also denied the age and income of the appellant. It also denied that the appellant had spent an amount of Rs.

50,000/- on account of the medicine and medical treatment; therefore, it prayed for dismissal of the appeal.

(8) Having considered the pleadings of the parties, the learned Tribunal has framed issues, pursuant to the said issues, appellant/petitioner has examined himself and Medical Officer Dr. Dabhere and produced and proved the documents. On the other hand, the respondents have not led any evidence in support of their defence. After considering the material on record, the petition was partly allowed and granted compensation of Rs. 25000/- inclusive of the NFL amount. Being dissatisfied with the same, the appellant has preferred this appeal.

(9) Heard learned counsel for both the parties, perused the impugned judgment, record and proceedings. I have also gone through the judgments relied upon by the learned counsel for the appellant in ***Chandramani Nanda vs. Sarat Chandra Swain and another [2024] 10 SCR 920*** and ***Gajanan Mahadeo Gulhane vs. Bharat Trading Company [First Appeal No. 197/2007 decided on 13/04/2016]***. The following points arise for my consideration :-

1. *Whether the appellant entitled to an enhancement of the compensation?*
2. *Whether any interference is required in the impugned judgment and order ?*

<u>As to Points No. 1 and 2</u> :-

(10) It is pertinent to note that respondents have not challenged the impugned judgment and award. This itself indicates that they do not have any dispute or grievance about the findings recorded by the learned Tribunal, and therefore, those findings are binding on them. On the other hand, the appellant has preferred this appeal only on the point of quantum, contending that the learned Tribunal has not considered the disability certificate in its proper perspective and erred in declining to grant compensation under the head of functional disability.

(11) The learned counsel for the appellant has taken me through the impugned judgment and evidence on record and submitted that the learned Tribunal, after considering the evidence on record, has categorically held that the appellant/petitioner proved that he has suffered permanent disability, to the extent of 32%; however, the learned Tribunal has erred in holding that there is no parameter for ascertaining actual effect of the permanent disablement, and Tribunal failed to grant compensation under the head of future loss of earnings Therefore, he urged to grant of enhanced compensation under the head of future loss of earnings.

(12) On the other hand, learned counsel for the respondent

No.2 submitted that the disability certificate indicates that the appellant has sustained permanent disability to his left leg only and not regarding to the entire body, thus, contended that the said disability could not be considered to be the functional disability nor could it be assumed to result in a corresponding extent of loss of earning capacity and therefore, the appellant is not entitled to claim the compensation on the said point and the learned Tribunal has rightly recorded its finding in that regard.

(13) While considering the aforesaid controversy, I would like to reproduce paras 6, 8, 13, 19, 20 and 25 of the judgment of Hon'ble Supreme Court in the case of ***Raj Kumar vs. Ajay Kumar and another***, ***(2011) 1 SCC 343***, which read as under:-

> *"**6.** The heads under which compensation is awarded in personal injury cases are the following :*
>
> *Pecuniary damages (Special Damages)*
>
> *(i) Expenses relating to treatment, hospitalisation, medicines, transportation, nourishing food, and miscellaneous expenditure.*
>
> *(ii) Loss of earnings (and other gains) which the injured would have made had he not been injured, comprising :*
>
> *(a) Loss of earnings during the period of treatment;*
>
> *(b) Loss of future earnings on account of permanent disability.*
>
> *(iii) Future medical expenses.*
>
> *Non-pecuniary damages (General Damages)*
>
> *(iv) Damages for pain, suffering and trauma as a consequence of*

the injuries.

(v) Loss of amenities (and/or loss of prospects of marriage).

(vi) Loss of expectation of life (shortening of normal longevity).

In routine personal injury cases, compensation will be awarded only under heads (i), (ii), (a) and (iv). It is only in serious cases of injury, where there is specific medical evidence corroborating the evidence of the claimant, that compensation will be granted under any of the heads (ii)(b), (iii), (v) and (vi) relating to loss of future earnings on account of permanent disability, future medical expenses, loss of amenities (and/or loss of prospects of marriage) and loss of expectation of life.

Assessment of future loss of earnings due to permanent disability

8. *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 residual 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 accident 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 ('The Disabilities Act' for short). But if any of the disabilities enumerated in section 2(i) 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.*

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.*

19. *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 the percentage of loss of earning capacity is the same as the 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 to 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 its entirety.

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

20. *The assessment of loss of future earnings is explained below with reference to the following illustrations:*

Illustration 'A': *The injured, a workman, was aged 30 years and earning Rs. 3000/- per month at the time of the accident. As per the Doctor's evidence, the permanent disability of the limb as a consequence of the injury was 60% and the consequential permanent disability to the person was quantified at 30%. The loss of earning capacity is, however,* assessed by the Tribunal as 15% on the basis of evidence, because the claimant is continued in employment, but in a lower grade. Calculation of compensation will be as follows :

a)	***Annual income before the accident***	***:***	***Rs.36,000***
b)	***Loss of future earnings per annum (15% of the prior annual income)***	***:***	***Rs.5400***

c)	***Multiplier applicable with reference to age***	***:***	***17***
d)	***Loss of future earnings (5400 x 17)***	***:***	***Rs. 91,800***

Illustration 'B': *The injured was a driver aged 30 years, earning Rs. 3000/- per month. His hand is amputated, and his permanent disability is assessed at 60%. He was terminated from his job as he could no longer drive. His chances of getting any other employment was bleak,* and even if he got any job, the salary was likely to be a pittance. The Tribunal therefore assessed his loss of future earning capacity as 75%. Calculation of compensation will be as follows :

a)	***Annual income prior to the accident***	***:***	***Rs.36,000***
b)	***Loss of future earnings per annum (75% of the prior annual income)***	***:***	***Rs.27000***
c)	***Multiplier applicable with reference to age***	***:***	***17***
d)	***Loss of future earnings (27000 x 17)***	***:***	***Rs. 4,59,000***

Illustration 'C': *The injured was aged 25 years and a final year Engineering student. As a result of the accident, he was in a coma for two months, his right hand was amputated, and his vision was affected. The permanent disablement was assessed as 70%. As the injured was incapacitated to pursue his chosen career and as he required the assistance of* a servant throughout his life, the loss of future earning capacity was also assessed as 70%. The calculation of compensation will be as follows:

a)	***Minimum annual income he would have got if had been employed as an Engineer***	***:***	***Rs.60,000***
b)	***Loss of future earnings per annum (70%of the expected annual income)***	***:***	***Rs.42000***
c)	***Multiplier applicable (25 years)***	***:***	***18***
d)	***Loss of future earnings (42000 x 18)***	***:***	***Rs.7,56,000***

[Note : The figures adopted in illustrations (A) and (B) are hypothetical. The figures in Illustration (C), however, are based on actuals taken from the decision in Arvind Kumar Mishra].

25. ***The Tribunal has proceeded on the basis that the permanent disability of the injured-claimant was 45% and the loss of his future***

> ***earning capacity was also 45%.*** *The Tribunal overlooked the fact that the disability certificate referred to 45% disability with reference to* ***the left lower limb and not in regard to the entire body****.* ***The said extent of permanent disability of the limb could not be considered to be the functional disability of the body, nor could it be assumed to result in a corresponding extent of loss of earning capacity, as the disability would not have prevented him from carrying on his avocation as a cheese vendor, though it might impede his smooth functioning****.* ***Normally, the absence of clear and sufficient evidence would have necessitated remand of the case for further evidence on this aspect. However, instead of remanding the matter for a finding on this issue, at this distance of time after nearly two decades, on the facts and circumstances, to do complete justice, we propose to assess the permanent functional disability of the body as 25% and the loss of future earning capacity as 20%."***

(14) Upon perusal of the above paragraphs, it is revealed that in para 13, the Apex Court observed how to ascertain the effect of the permanent disability, and in para 19 same were summarised, and in para 20 three illustrations were given as to how the loss of earning capacity has to be assessed, lastly in para 25 the Court held that though, disability certificate referred to 45% disability with reference to left lower limb and not in regard to the entire body, the Hon'ble Supreme Court assessed the permanent functional disability of the body as 25% and loss of future earning capacity as 20%.

(15) Similarly, learned counsel for the appellant relied upon the judgment of the Hon'ble Supreme Court in ***Mohd. Sabeer alias Shabir Hussain vs. Regional Manager, U.P. State Road Transport Corporation 2022, SCC OnLine SC 1701*** and submitted that after considering the judgments in ***Raj Kumar*** (supra), as well as ***National***

Insurance Company Ltd. vs. Pranay Sethi and others AIR 2017 SC 5157, the Hon'ble Supreme Court held that 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 has to be considered. Perused the judgment, it seems that in the said case, the appellant therein had produced the permanent disability certificate on record, which indicates that the appellant therein had suffered 70% disability as his right lower limb was amputated and the High Court had reduced the functional disability to the extent of 35%, therefore, the Hon'ble Supreme Court held that said finding of the High Court is incorrect and loss of future earning capacity must be calculated at 60% instead of 70%.

(16) Learned counsel for the appellant also argued that the appellant was a shepherd/cowboy and due to injury sustained by him, he is unable to do his work and therefore, he argued that entire 32% disability has to be taken into consideration while determining the compensation for the loss of future earnings of the appellant.

(17) Perused the evidence of PW-2 Dr. Dabhere, who deposed that "*the appellant had sustained 32% disability, as his left leg had fractured tibia and fibula, left side compound Grade-II middle 1/3rd*", but during his cross-examination, he deposed that he advised the appellant to undergo surgery, in such circumstances, there would have been improvement in the ailment and disability; however, the appellant refused to do the same.

(18) It is pertinent to note that the disability certificate was not issued by the Medical Board appointed under the Act, but the same was issued by an Orthopaedic Doctor, Mr. Dabhere. In the said certificate, he has mentioned the disability of his left leg and not the entire body; therefore, having considered the observations made in ***Raj Kumar*** (supra), I am of the view that the said disability is in respect of the left leg and not in regard to the entire body. Therefore, it would be appropriate to assess the permanent functional disability of the body to the extent of 25% and loss of future earning capacity as 20%.

(19) Apart from the above, it can be inferred from the cross-examination of the appellant that, the bones of left leg of the appellant's had reunited, as during his cross examination he has categorically admitted that "*he alone went to the Court at Pandharkawda from Umari by bus and from Bus Stand Pandharkawda to the Court by walking about one furlong*", which itself indicates that he does not require any assistance to go to out station alone or that he can walk without any assistance. He can do his daily work without any assistance. In such circumstances, in my view, it would be proper to assess his functional disability of the body to the extent of 25% and loss of future earning capacity as 20%.

(20) It further appears that, as per the mandate in the case of ***Raj Kumar*** (supra) and the decision of this Court in ***Gajanan Mahadeo Gulhane vs. Bharat Trading Company [F. A. No. 197/2007 decided on 13/04/2016]***, after considering the decisions of the Hon'ble Supreme Court and High courts, had granted the compensation under the head of the loss of future earning capacity.

(21) Further, in ***Mohd. Sabeer*** (supra), the Hon'ble Supreme Court, after considering the judgment of the Constitution Bench in ***Pranay Sethi*** (supra), has granted compensation for the loss of future earnings capacity of the claimant therein. That being so, I have no hesitation in holding that the appellant is also entitled to get compensation under the head of loss of future earning capacity to the extent of 20% of his annual income/earnings.

(22) The next point argued is that what the income of the appellant at the time of the accident. To deal with the same, it would be appropriate to go through the evidence of the appellant, i.e. PW-1 Prakash Gedam, wherein he has categorically deposed that '*he was working as a shepherd/cowboy and was earning Rs. 3000/-p.m*'. *During* *his cross-examination*, he candidly admitted that "*he was earning wages equal to agricultural labourer, and that the wages of agricultural labourers were around Rs. 50/- to 60/- daily*"; however, he denied that he falsely deposed that he was earning Rs. 100/- daily. It is pertinent to note that the appellant has not produced any document on record to show that he was earning Rs. 100/- per day. On the contrary, his testimony categorically demonstrates that the appellant was working as a shepherd/cowboy and he was earning wages equal to agricultural labour, i.e. Rs. 50/- to 60/- daily/per day.

(23) It is pertinent to note that in the evidence, the appellant has deposed that he was earning Rs. 100/- per day, i.e. Rs. 3000/- per month. Learned Tribunal, after considering the evidence on record, held that the appellant must have earned Rs. 100/- per day, which is the minimum. Said finding has not challenged by the respondent No.2 by filling cross objection or appeal and therefore, it appears that respondent No.2 does not dispute the said findings nor aggrieved by the same, therefore, in my view, it would not be appropriate to interfere in the finding recorded by the learned Tribunal in respect of the earning of the appellant i.e. Rs.100/- per day.

(24) Now, the crucial question that arises is ***how much compensation the appellant is entitled to***?

While considering the above facts, the learned Tribunal awarded compensation under the different heads as under :-

Pain and suffering	**:**	**Rs. 5000**
Medical Treatment & Medicines	**:**	**Rs. 3000**
Travelling and Special Diet	**:**	**Rs. 1000**
Actual loss of income for 2 months	**:**	**Rs. 6000**
Future loss (Notionally)	**:**	**Rs.10000**
Total Compensation	**:**	**25000**

(25) It seems that the learned Tribunal has not awarded compensation under the head of loss of future earning capacity. Similarly, it appears that the learned Tribunal has awarded minimal compensation under different heads, as mentioned above, which needs to be increased.

(26) In view of the mandate in ***Mohd. Sabeer*** (supra), it is necessary to award the compensation under the head of the loss of future earnings and therefore, the same is required to be calculated based on loss of future earnings to the extent of 20% of the entire income as discussed above (i.e. 20% of Rs. 3000/- which comes to Rs.600/- p.m.). At the time of the accident, the appellant was 32 years old, i.e. between the age group of 31-35, so the multiplier of 16 is applicable and thus, the calculations are as under:-

Income	**:**	**Rs. 3,000 p.m**
Functional Disability (20%) **(Rs. 3000 x 20% x 12)**	**:**	**Rs. 600 p.m.** **Rs. 7,200 p.a.**
Multiplier (16)	**:**	**Rs. 7,200 x 16**
Loss of future earnings	**:**	**Rs. 1,15,200**

(27) Based on the above calculation and factual position, the appellant is entitled to get enhanced compensation under the different heads, as follows :-

Pain and suffering	**:**	**Rs. 20000**
Medical Treatment & Medicines	**:**	**Rs. 9800**
Travelling and Special Diet	**:**	**Rs. 10000**
Loss of earning capacity future	**:**	Rs. 115200
Loss of amenities of life	**:**	**Rs.10000**
Total		**Rs.165000**

(28) Thus, it appears that the appellant is entitled to a compensation amount of Rs.1,65,000/-, which is just and fair compensation. It further appears that the learned Tribunal, while awarding compensation, has not granted any interest on the said amount, as the amount of Rs. 25,000/- was paid to the appellant after passing of the no-fault liability order. The accident had occurred in the year 2006, and therefore, in my view, it would be proper to grant interest @9.00% p.a. from the date of filing of the petition.

(29) As a result, the appeal is allowed. The respondents No.1 and 2 are jointly and severally liable to pay enhanced compensation of Rs.1,65,000/- (including Rs.25000/- paid towards no-fault liability) along with interest @9.00% p.a. (excluding the amount of Rs.25,000/-) from the date of filing of the application till the realisation of the amount. As such, the respondents No.1 and 2 are directed to deposit the said amount within 10 weeks.

(30) On deposit of the amount and realisation of the same, the Registrar (J) is directed to transmit the said amount in the bank account of the appellant within eight weeks, on his furnishing bank account details to the Registry. No order as to costs.

[ABHAY J. MANTRI, J.]

KOLHE