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

FIRST APPEAL NO.754 OF 2011

Bhupal Pannalal Dongaonkar (Jain) (Dead)
Age 55 years, Occ : Business and Agriculturist, R/o. Deulgaon-Raja, Tq. Deulgaon-Raja, Distt. Buldana.

Thrs L.Rs of Appellant brought on record.

Through L.Rs of Appellant No.1.

Amendment carried out as per Court Order dated 19/09/2025

1-a) Archana wd/o Bhupal Dongaonkar,
Aged about 62 years,
Occu : Housewife,
R/o. Tamatkar Galli,
Deulgaon Raja, Tah. Deulgaon Raja,
Distt. Buldana.

1-b) Prajakt s/o Bhupal Dongaonkar,
Aged about 41 years,
Occu : Service,
Permanent R/o. Tamatkar Galli,
Deulgaon Raja, Tah. Deulgaon Raja,
Distt. Buldana.

1-c) Nikit s/o Bhupal Dongaonkar,
Aged about 38 years,
Occu : Service,
Permanent R/o. Tamatkar Galli,
Deulgaon Raja, Tah. Deulgaon Raja,
Distt. Buldana. .. Appellants

..Versus..

1) Badrinath Dattu Sable,
Age : Major, Occ : Owner of Jeep
R/o. Dhaydi, Post : Gondegaon,
Tq. & Distt. Jalna.

2) The Oriental Insurance Co. Ltd.
Through it's Branch Manager,
Branch Office at Gandhi Chamber,
2nd Floor, Sarojani Devi Road,
Jalna, Tq. & Distt. Jalna. .. Respondents

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Shri Pratik Jain, Advocate with Shri M.R. Joharapurkar, Advocate for Appellants.

Shri P.S. Kshirsagar, Advocate for Respondent No.1.

Shri A.W. Paunikar, Advocate for Respondent No.2.

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CORAM : PRAVIN S. PATIL, J.
DATED : 12.12.2025.

JUDGMENT

1. By way of present appeal, the challenge is to the judgment and order dated 4.5.2011 passed by the Motor Accident Claims Tribunal, Buldana in Motor Accident Claim Petition No.153/2004 by the original claimant, seeking thereby enhancement in the compensation amount awarded by the Tribunal.

2. In the present case, the details of the accident and the person, who was responsible for the accident, is not disputed. It is also pertinent to note that neither owner nor insurance-company filed any separate appeal

or cross-objection to dispute about accident occurred in the matter. As such only issue which requires consideration in the present matter is about enhancement of the compensation awarded by the learned Tribunal in the matter.

3. In the present matter, the perusal of the record shows that in support of the claim made before the Tribunal, the present appellant entered into the witness box and stated that due to accident dated 22.6.2003 he sustained serious injuries and 14 fractures. Therefore, he was hospitalized at Dr. Atul M. Jinturkar, then he was shifted to the Seth Nandlal Dhoot Hospital at Aurangabad as an indoor patient for a period of 22.6.2003 to 27.6.2003. During that period he was operated on 23.6.2003 for bilateral humerus nailing for femur fracture, lateral condale tibia fixation, ulna and radius fixation.

4. It is further stated that during his period of hospitalization, he received multiple blood transfusion and IV and oral medicine. He was in intensive care unit

for two days. It is further stated that he was under the hospitalization of Dr. Jinturkar for 15 days as well as Dr. Bipin Shende for about 1½ months. Then he stated that in the year 2005 the rod inserted in his leg was removed. In the light of this submission, the appellant has relied upon the medical certificate issued by Dr. Bipin Shende (Exh.49). This medical certificate shows that he was hospitalized at Dr. Dhoot Hospital at Aurangabad on 22.6.2003 and was discharged on 27.6.2003 and due to the operation, his knee was shortened due to bilateral humerus nailing for femur fracture and accordingly it was stated that there was permanent disability of 40%.

5. In respect of income, the appellant has stated before the claim tribunal that he was working as a Proprietor and Manager of Cinema Theater. He further stated that before the accident he used to manage the entire work, but now he has employed the Manager and required to pay Rs.5,000/- per month. There is no further evidence as to how he caused loss in future

income due to the accident and disability caused to his leg.

6. The respondents have examined the present appellant before the claim tribunal. It is brought on record by the respondents that even after the accident, the Cinema Theater is functioning and agricultural operations are in progress. It is also brought on record that he got the renewal of licence of Theater. It was suggested that he was not treated by Dr. Shende and in absence of his treatment, the disability certificate issued by Dr. Shende is brought on record.

7. The appellant in support of his claim also examined Dr. Raju Ashok Mohgaonkar. According to this witness, he stated that he was practicing at Dr. Dhoot Hospital since 1998 and examined the present appellant on 22.6.2003. He has narrated about the hospitalization of the appellant and operation carried out in the hospital. It is also confirmed by this witness that subsequent to accident on 2.8.2005, the implant was removed from his leg.

This witness was cross-examined by the present respondents. This witness states that the hospital has maintained all the records and the medical bills which are placed on record are Exh.50 and other bills are not as per his prescription. This witness could not point out the percentage of disability caused to the appellant.

8. Before the claim Tribunal, the respondents did not record any evidence on their behalf and solely relied upon the evidence which appellant brought on record and cross-examination conducted by them in the matter. In the background of above said evidence, the learned Tribunal proceeded to decide the claim petition.

9. The learned Tribunal has considered the disability certificate (Exh.49) and the discharge card of Dhoot Hospital, Aurangabad (Exh.46) to determine the disability caused to the appellant in the matter. The learned Tribunal on the basis of original medical receipts which were filed at Exh.39 has been considered and on that basis concluded that the appellant is entitled for

Rs.34,464/- towards the medical expenses. In respect of loss of business, in absence of any evidence brought on record by the appellant, who has stated that he was Proprietor-cum-Manager of Cinema Theater, the learned Tribunal has awarded lump-sum amount of Rs.50,000/- towards the disability, Rs.25,000/- towards the pain and suffering and Rs.10,000/- towards the accidental expenses like transportation and attendance. Hence, the total compensation has been awarded Rs.1,19,464/- along with 7.5 % per annum.

10. The appellant herein challenged the judgment of the learned Tribunal on the ground that the learned Tribunal has not properly considered the functional disability, loss of income, hospitalization charges and pecuniary and non-pecuniary damages in right perspective. Hence, he seek enhancement in the compensation. One more ground which is raised by the appellant that the appellant was doing the private business i.e. Cinema Theater, his income should have been considered at the rate of Rs.10,000/- per month,

the same was not considered by the claim Tribunal and thereby he has been awarded the less compensation in the matter.

11. In the light of the submissions made by the appellant, the law laid down by the Hon'ble Supreme Court of India in the case of ***Raj Kumar .vs. Ajay Kumar, reported in (2011) 1 SCC 343*** would be relevant to consider in the matter. Para 9, 10, 11, 12 and 13 are relevant to consider and assess the correct assessment of loss to the injury in a case of permanent disability.

> *9. The percentage of permanent disability is expressed by the doctors with reference to the whole body, or more often than not, with reference to a particular limb. When a disability certificate states that the injured has suffered permanent disability to an extent of 45% of the left lower limb, it is not the same as 45% permanent disability with reference to the whole body. The extent of disability of a limb (or part of the body) expressed in terms of a percentage of the total functions of that limb, obviously cannot be assumed to be the extent of disability of the whole body. If there is 60% permanent disability of the right hand and 80% permanent disability of left leg, it does not mean that the extent of permanent disability with reference to the whole body is 140% (that is 80% plus 60%). If different parts of the body have suffered different percentages of disabilities, the sum total there of expressed in terms of the*

permanent disability with reference to the whole body cannot obviously exceed 100%.

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 carning 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:

(1) 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 (1) 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."*

12. In the light of the judgment of the Hon'ble Supreme Court of India which is till date is followed by all subsequent judgments of this court as well as Hon'ble Supreme Court, it is, therefore, necessary that while assessing the percentage of the permanent disability court has to first decide whether there is any permanent disability and if so, the extent of such permanent disability. If disability is expressed with reference to any specific limb then the effect of such disablement and

consequently the basis of percentage of loss of earning capacity. In this judgment, it is made clear by the Hon'ble Supreme Court, percentage of loss of earning capacity is not same as the percentage of the permanent disability. The person, who got permanent disability, has to establish on record as to what he was doing and performing his duties or work before accident and whether it is possible for him to perform the same work or not after accident, what future loss caused to him in the matter. However, in the present case, as discussed above, the appellant before the claim Tribunal has pointed out about the medical treatment which he has taken and in respect of loss, he has only stated that earlier he was working as a Proprietor and Manager of Cinema Theater and now for the said purpose he has employed another person as a Manager on monthly basis. Hence, in such circumstances, it is clear that no evidence is brought on record of loss in income and whether after removing implant, his disablement remain same or not.

13. In respect of permanent disability, the submission of the present appellant is that as per the medical certificate, it is shown to be a 40% disability, but the careful reading of this document shows that it was to the particular limb and not to the whole body. Therefore, as per the law laid down by the Hon'ble Supreme Court of India in the case of ***Raj Kumar .vs. Ajay Kumar*** *(supra),* the disability is to be considered on the part of one knee and, therefore, while considering this disability for deciding the loss of future income, the percentage is required to be taken into consideration on the basis of loss the appellant was caused in the matter.

14. In the present case, unfortunately no evidence was brought on record by the appellant as to how much loss he was caused due to disability as there was a functional disability. In my opinion, in such circumstances, the loss to his income can be considered at the most 15 percent by considering the medical certificate.

15. Here, admittedly the appellant was running the Cinema Theater and he was managing the entire work. As per his evidence, he has employed the Manager but again not produced on record any documents how much salary he was paying to the Manager or who was the person appointed as a Manager of the Cinema Theater. On the contrary, it is established on record during the cross-examination that Cinema Hall was functioning after the accident and so also agricultural operation were in progress. Hence, in my opinion, considering his all factors of the matter and considering his status and work he was doing at the time of incident, his notional income is required to be considered at the rate of Rs.6,000/- per month. And the functional disability is to be considered at 15% for the loss of future income caused to the appellant in the matter.

16. In respect of hospitalization and medical bills, the learned Tribunal has awarded lump-sum amount of Rs.50,000/-. The appellant has only produced the medical bills and receipt of the hospitals which shows

the entire expenditure was around Rs.1,00,000/- caused to the appellant in the matter. Considering the fact that he caused injury during the accident is entitled for the expenses towards the hospitalization and attendance charges, pain and suffering and loss of future amenities and hence, in my view, the appellant is entitled for the compensation as under :

1.	Notional Monthly Income	Rs. 6,000/- p.m
2.	Total Income (6,000/- x 12)	Rs. 72,000/-
3.	Loss of future earning capacity (15% of Rs. 72,000/-) As per Judgment of Raj Kumar Vs Ajay Kumar	Rs. 10,800/-
4.	Loss of Income during said period (10,800 x 13)	Rs. 1,40,400/-
5.	Pain and Suffering	Rs. 25,000/-
6.	Hospitalization + Medical bills	Rs. 1,00,000/-
7.	Conveyance and attendant charges	Rs. 5,000/-
8.	Loss of Future amenities	Rs. 15,000/-
9.	Future medical expenses	Rs. 15,000/-
10.	Total Compensation	Rs. 3,00,400/-

17. Hence, I proceed to pass the following order :

O R D E R

(1) The appeal is partly allowed.

(2) The judgment and order dated 4.5.2011 passed by the Motor Accident Claims Tribunal, Buldana in Motor Accident Claim Petition No.153/2004 is

modified to the extent that the appellant is entitled for the compensation of Rs.3,00,400/- along with interest at the rate of 7.5 % per annum from the date of judgment of claim Tribunal, Buldhana till its full realization.

(3) Needless to mention that amount awarded and withdraw by the claimants shall be deducted from the enhance claim.

(4) The Respondent no.2-Insurance Company is directed to deposit the enhanced compensation amount within a period of 12 weeks.

(5) The present legal heirs of the appellant are permitted to withdraw the said amount subject to satisfaction of the Registrar (Judicial).

(6) No order to cost.

(Pravin S. Patil, J.)

Gulande