



FAO-38-2022 (O&M)

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

FAO-38-2022 (O&M)

Date of Reserve: November 21, 2025

Date of Pronouncement:-18.12.2025

Date of Uploading:-19.12.2025

Oriental Insurance Co. Ltd.

.....Appellant(s)

vs.

Janak Raj and others

.....Respondent(s)

CORAM: HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr. Harsh Aggarwal, Advocate, for the appellant

Mr. Tarun Sharma, Advocate for

Mr. Saurabh Chawla, Advocate, for respondent No. 1.

Mr. R.S. Khushwaha, Advocate, for respondent No. 2.

SUDEEPTI SHARMA J.

1. The present appeal has been preferred by the appellant-Insurance Company against the award dated 13.09.2021 passed in the claim petition bearing MACP-176-2017 filed under Section 166 of the Motor Vehicles Act, 1988 by the learned Motor Accident Claims Tribunal, Panchkula (Haryana) (for short, 'the Tribunal') whereby the claimant was granted compensation to the tune of Rs.20,20,000/- and the Insurance Company was held liable to pay the compensation but no recovery rights were granted to the appellant-Insurance Company and on the ground of quantum of compensation to be on higher side

FACTS NOT IN DISPUTE

2. Brief facts of the case are that on 11.07.2017 Jaspreet Kaur along with other claimants i.e Surender Singh, Raju and others were travelling in the three

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Dhaba, Jholuwal to village Madhanwala. At about 8:30 A.M, when they reached near village Nanakpur, District Panchkula, in the meanwhile, a Cruiser Taxi bearing registration No. 68-B-6604 being driven by respondent No. 2 rashly and negligently at a very high speed came from opposite side and hit against the three wheeler. Due to the impact of the accident, the claimants and driver of the three wheeler fell down on the road. All the claimants received multiple and grievous injuries. FIR No. 224 dated 11.07.2017 was registered at P.S. Pinjore, District Panchkula under Section 279/337/338/427 of IPC regarding this accident.

3. Upon notice of the claim petition, respondents appeared and admitted the factum of compensation.

4. From the pleadings of the parties, the following issues were framed by the learned Tribunal :-

“1. Whether claimant Janak Raj received injuries in a road side vehicular accident occurred on 11.07.2017 due to rash and negligent driving of Taxi Cruiser bearing registration No. HR-68-B-6604 by respondent No. 1, as alleged? OPP.

2. If issue No.1 is proved, whether the petitioner is entitled to any compensation and if so, to what extent and from whom? OPP

3. Whether respondent No. 1 and 2 had violated any terms and conditions of the insurance policy as alleged? OPR-4

4. Relief.”

5. After taking into consideration the pleadings and the evidence on record, the learned Tribunal awarded compensation to the claimant. However, the appellant-Insurance Company was held liable to pay the compensation. Hence, the present appeal.



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SUBMISSION OF LEARNED COUNSEL FOR THE PARTIES.

6. Learned counsel for the appellant-Insurance Company contends as under:-

(i) That at the time of the accident the offending vehicle was not having valid route permit. He further contends that non-possession of a valid route permit constitutes fundamental breach of the terms and conditions of the insurance policy. Despite such breach, the learned Tribunal failed to grant recovery rights to the appellant-Insurance Company against the owner of the offending vehicle. He, therefore prays that the present appeal be allowed.

(ii) That the learned Tribunal failed to appreciate that Dr. K.K. Bansal (PW-2) assessed the permanent disability of the respondent-claimant as 25% in relation to the affected limb, as reflected in the disability certificate (Ex. PW-2/A), and therefore the functional disability could not have been assessed at 100%.

(iii) That there is no material on record to establish that the respondent-claimant was permanently incapacitated from earning his livelihood so as to justify assessment of functional disability at 100%.

(iv) That the learned Tribunal has committed an error in assessing the age of the claimant/respondent as 33 whereas as per driving licence (Ex R1), his age is 36 years at the time of the accident, therefore, he contends that the learned Tribunal has erred in applying multiplier of 16 instead of 15, as per settled law.

7. Learned counsel for the claimant/respondent No. 1 vehemently contends that the liability has rightly been fixed upon the Insurance Company by the learned Tribunal.

8. Per contra, learned counsel for respondent No. 2/driver-cum owner of three wheeler vehemently argues on the lines of the award and prays that the present appeal be dismissed.

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9. I have heard learned counsel for the parties and perused the whole records of the case.

10. Before proceeding further, it is relevant to reproduce the relevant portion of the award, which reads as under:-

“ISSUE NO.2:

16. As testified by the petitioner - Janak Raj PW1, from the spot of accident, he was taken to CHC, Pinjore by private car but due to his serious condition, he was shifted to Civil Hospital, Sector-6, Panchkula, where he was operated upon for his both fractured legs, left arm, face and other injuries. He is still under treatment and that an amount of 1,50,000/- has been spent on his treatment, special diet. transportation and medicines etc. He also deposed about nature of injuries and that he has now become permanently disabled. During cross-examination, he admitted that he remained admitted in Government Hospital, Sector-6, Panchkula for about 26-27 days and hospital did not charge any amount from him. Police recorded his statement in hospital and thereafter, he was not called by the police.

17. To support his statement, petitioner examined PW2 Dr. K. K. Bansal S.M.O., GH., Sector-6, Panchkula, who deposed that on 18.12.2019, claimant Janak Raj was examined by the Medical Board and he was found an operated case of fracture of both bone legs with nall in situ. He was also found fracture BBFA left with plates in situ. His disability was found to be 25% due to restricted movements in relation to left upper limb and left lower limb, which is permanent in nature. He proved the disability certificate Ex.PW2/A. He further deposed that the patient will face difficulty while driving and that this disability will also affect him in day to day

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activities. PW2 further stated that the disability is not likely to be improved with the passage of time. During cross-examination, PW2 disclosed that the disability is not likely to be reduced with the passage of time. The disability is qua limb only and not whole body. PW2 stated that the claimant may fall while driving

18. As far as expenses incurred on the treatment are concerned, Ex.P2 to Ex.P24 are the X-ray films. Ex.P25 to Ex.P28 and Ex.P38 are the medical bills, which are for an amount of 12,071/-Ex.P29 and Ex.P30 are the discharge summaries prepared at Civil Hospital, Sector-6, Panchkula, which reveal that the petitioner was admitted there on 11.07.2017 and discharged on 02.08.2017 and then again from 01.09.2017 to 03.09.2017. It also reveals that the petitioner was found to have sustained multiple injuries. Ex.P31 to Ex.P35 are the prescription slips. Ex.P37 and Ex.P38 are the photographs of the accidental three-wheeler. Ex.P39 and Ex.P40 are the motor mechanic reports.

19 Having regard to the bills and prescription slips placed on file by the petitioner, an amount of 15,000/- is allowed to him to compensate him for medical expenses.

20. Considering the fact that petitioner had suffered fracture of both bones of his right leg and had to be operated, it can be well assumed that he must have taken special diet for early healing of injuries. Some or the other attendant must have taken care of him and he also must have used some private conveyance for attending the hospital as an OPD patient. An amount of 25,000/ is awarded as compensation to the petitioner towards these general expenses.

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Another amount of 30,000/- is allowed to compensate the claimant Janak Raj for the pain and suffering, keeping in view of injuries reflected in the disability certificate and other medical records and the duration of hospital stay be Petitioner Janak Raj further claims that he is a professional driver and is driving Auto Rickshaw and from this, he was earning 30,000/- per month prior to this accident. His family members were totally dependent upon his income. Prior to the accident, he was enjoying good health but due to the injuries sustained in the accident and disability of legs and left arm, he is unable to earn anything. However, there is no cogent evidence regarding the earnings of the claimant Janak Raj. At the same time, by keeping in view his profession as an auto driver, his notional income can be assumed to 10,000/- per month. By further assuming that having regard to the nature of injuries, he must have remained out of job for a period of three months and by calculating his notional income at the rate of 10,000/- per month, loss of income to the claimant works out to be 30,000/-. The petitioner is held entitled to this amount.

22. Coming to the future loss of income to the petitioner due to permanent disability, it is required to be seen that the disability caused to petitioner is physical disability only or it has also resulted in functional disability, as in many cases, the permanent disability also results in functional disability. In other words, whether the permanent physical disability of the petitioner will affect his earning capacity or not; and if yes, to what extent. This is to be decided by keeping in view his profession. Reliance can be placed on Raj Kumar v. Ajay Kumar & Anr. 2011 ACJ 1 (SC), Hon'ble Supreme Court laid down the following principles for assessment of future loss of earnings due to permanent disability:-

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"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."

23. In present case, claimant Janak Raj was 33 years of age at the time of accident. He was a professional Auto taxi driver. He will have to face restrictions in his left upper and lower limb for ever. Importance of leg for any human being cannot be ignored. Having regard to the numerous grievous injuries on his person and as testified by PW2 Dr. Bansal, SMO, physical permanent disability is assessed at 25% in relation to left upper limb and left lower limb. However, functional disability is assessed as

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100%, having regard to his profession of driving as he will never able to drive and is likely to fall while driving as stated by PW2. This position is permanent in nature and is not likely to improve with passage of time as per PW2 Dr. K. K. Bansal and so, his functional disability is assessed to be 100%. If on notional basis, his income is assumed to be 10,000/- per month i.e. 1,20,000/- per annum and taking the multiplier as 16 considering his age, his total notional income works out to be 19,20,000/- (10,000 x 12 x 16), which in my view should be compensation towards functional permanent disability of the petitioner. As such, an amount of 19,20,000/- is allowed to the petitioner for the aforesaid permanent functional disability.

24, Considering the above discussion, total compensation amount payable to petitioner Janak Raj for the injuries sustained by him is assessed to be 20,20,000/- under various heads, as per the following table:-

Sr. No.	Head	Amount
1.	Medical Expenses	₹15,000/-
2.	General Special diet, transportation and attendant charges	₹25,000/-
3.	Loss of salary	₹30,000/-
4.	Pain and suffering	₹30,000/-
5.	Future Loss of Income due to 100% Functional permanent disability	₹19,20,000/-

25. Ex.R1 (also Ex.P41) is the insurance policy revealing that offending vehicle was insured by respondent no.1 in the name of respondent no.2 for the period 05.06.2017 to 04.06.2018. It covers the date of the accident. As such, it is held that all the respondents being driver, owner and insurer respectively of the offending vehicle are jointly and severally liable to pay

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compensation amount to the injured-claimant. Issue No.2 is accordingly decided to the effect that petitioner is entitled to compensation of ₹20,20,000/-, payable by all the three respondents jointly and severally.

ISSUE NO.3:

26. There is no evidence on the part of respondent No.3-Insurance Company that respondents No.1 and 2 (respondent No.1 -driver died) have violated the terms and conditions of the insurance policy. In the final report u/s 173 Cr.P.C Ex.P7 (attached with the connected petitions) submitted by the police in the criminal case, there are reference of certificate of registration of Cruiser Taxi, insurance. State Permit A-B, Form 47 and pollution certificate of vehicle No.HR-68-B-6604 having been taken into possession vide recovery memo dated 03.08.2017. All the aforesaid documents were valid on the date of accident.

27. Although in view of the fact that the offending vehicle was insured at the time of accident, the liability of all the respondents should be joint and several but respondent No.3-insurance company has sought to escape from its liability by pointing out that Sandeep Singh (since deceased) driver of offending Cruiser Taxi bearing No.HR-68-8-6604 was not holding a valid and effective driving license at the time of accident and he was also challaned by the police for the offence under Section 3/181 of the Motor Vehicle Act for not producing the license. Learned counsel for respondent No.3 contended that from the copy of final report under Section 173 Cr.P.C. Ex.P7 as produced in the connected claim petitions, it is clearly proved on record that respondent No.1 was not holding a valid driving license at the time of accident and so, the insurance company is not liable to pay the compensation.



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28. *There is no merit in the contention. In the connected claim petitions filed by 4 of the injured who were traveling in the Auto of petitioner Janak Raj, respondent No.2 owner of offending Cruzer Taxi bearing No.HR-68-8-6604 produced copy of the Driving Licence as Ex.R7 in the name of respondent N: 1 Sandeep Singh (since deceased). issued by Licensing Authority, Govt. of Manipur, revealing that said respondent was authorised to drive transport vehicle i.e. kind of offending vehicle w.e.f 29.12.2013 till 20.07.2020. This period covers the date of accident for kind of offending vehicle. There is no evidence on the part of respondent No. 3- Oriental Insurance Company that said D/L is fake.”*

11. A perusal of Exhibit R-9, the permit issued by the Regional Transport Office, Panchkula, clearly reveals that the permit was valid for the period from 12.07.2017 to 15.06.2018. It is undisputed fact that the accident in question occurred on 11.07.2017. Thus, on the date of the accident, the offending vehicle was being plied without any valid route permit.

13. It is now well-settled law, as consistently held by the Hon’ble Supreme Court in catena of judgments, that plying a vehicle without a valid route permit at the time of the accident amounts to a material and fundamental breach of the insurance policy. In such circumstances, although the Insurance Company may be directed to satisfy the award in the first instance so as to protect the rights of the third-party claimant whereas it is entitled to recover the amount so paid from the owner of the offending vehicle.

13. Reliance in this regard may be placed upon the recent judgment of the Hon’ble Supreme Court in ***Branch Manager, The National Insurance Co. Ltd. v. Avipsa Pathak (Minor), 2025 (3) TAC 42***, wherein the legal position has been reiterated. The relevant extract of the same is reproduced as under:-



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“5. We are of the considered view that appeals need to be allowed to the extent of findings returned by the High Court, holding the Insurer alone, liable to pay the amount, to be, in our view erroneous, for, as has emerged from the record, the respondent-owner did not have a valid route permit to ply the vehicle at the time of occurrence of the accident. This was a material breach of the Insurance Policy.

12. Such a finding, we find to be erroneous and not borne out from the record. The vehicle in question did not have a valid route permit as on the date of occurrence of the accident, which was on 22.10.2018. Mere submission of application to obtain a route permit prior to the occurrence of the accident, ipso facto, would not make the vehicle worthy of being plied, as a stage carriage, on the road. The route permit for plying such a vehicle is a condition precedent under the provisions of the Motor Vehicles Act, 1988. Hence, the aforesaid findings need to be reversed to this effect. As such, we hold that even though the appellant (Insurer) would pay the amount to the claimants but would be entitled to recover the same, both from the owner and the driver of the vehicle in question.”

14. In view of the foregoing discussion and the settled legal position, the findings recorded by the learned Tribunal on this issue are liable to be set aside. Accordingly, this Court holds that the appellant–Insurance Company shall satisfy the award amount in favour of the claimant in the first instance, with liberty

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reserved to it to recover the same from the owner and driver of the offending vehicle, in accordance with law.

15. So far as the contention of the learned counsel for the appellant–insurance company is concerned, it is argued that the learned Tribunal failed to appreciate that Dr. K.K. Bansal (PW-2) assessed the permanent disability of the respondent-claimant as 25% in relation to the affected limb, as reflected in the disability certificate (Ex. PW-2/A), and therefore the functional disability could not have been assessed at 100%. It is further contended that there is no material on record to establish that the respondent-claimant was permanently incapacitated from earning his livelihood so as to justify assessment of functional disability at 100%.

16. This contention does not merit acceptance. This Court is mindful of the settled position of law as enunciated by the Hon’ble Supreme Court in ***Rahul Ganpatrao Sable v. National Insurance Co. Ltd., 2023 (9) SCALE 970***, wherein it has been authoritatively held that where the nature of disability effectively incapacitates a person from pursuing any meaningful or gainful employment, the functional disability is required to be assessed in terms of the resultant loss of earning capacity and not merely on the basis of the percentage of medical disability assessed. The relevant portion of the judgment reads as under:

“14. The five injuries which are permanent in nature apparently make him unfit for any employment even though the disability may be 60% or 85%. The compression fractures of seven cervical vertebra resulting into paraplegia and further loss of bladder function make it absolutely impossible for a person to work and be gainfully employed. Considering the nature of

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disability, loss of income is, thus, held to be 100% and not 50% as held by the High Court.”

17. It is thus well settled that the percentage of permanent physical disability assessed with respect to a particular limb is not conclusive of the extent of functional disability or loss of earning capacity. Functional disability must be evaluated in the context of the nature and severity of the injuries sustained, their impact on the claimant's overall physical efficiency, and, most importantly, the nature of the vocation pursued by the claimant at the time of the accident.

18. In the present case, the evidence on record unequivocally establishes that the respondent No. 1-claimant, who was engaged as an auto taxi driver, has been rendered incapable of effectively performing his avocation due to the injuries sustained in the accident. Significantly, Dr. K.K. Bansal (PW-2), in his cross-examination, categorically deposed that the claimant may fall while driving, thereby clearly indicating that continuation of his profession would pose a serious risk to his safety as well as to others.

19. In these circumstances, notwithstanding the medical assessment of 25% permanent disability in relation to a limb, the learned Tribunal rightly assessed the functional disability of the respondent-claimant at 100%, having regard to the complete loss of earning capacity in his chosen profession. The said finding is in consonance with settled legal principles and does not warrant any interference. Accordingly, the contention raised on behalf of the appellant is wholly devoid of merit.

20. Now coming to the submission advanced on behalf of the appellant—Insurance Company that the learned Tribunal has committed an error in assessing the age of the claimant and in applying a multiplier of 16 instead of 15, the same does not merit acceptance.



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21. From the perusal of Ex. R-1, i.e., the driving licence of the claimant Janak Raj, it stands established that his date of birth is 06.12.1981. The accident in question occurred on 11.07.2017. On the said date, the claimant was aged 35 years, 7 months and 5 days.

22. It is well settled that for the purpose of determining the appropriate multiplier, the age last completed by the claimant on the date of accident is to be taken into consideration, and not the age calculated by including the additional months. The Hon'ble Supreme Court, in ***Shashikala & Ors. v. Gangalakshamma & Anr. (LawFinder Doc Id 658691)***, has reiterated the said legal position. The relevant portion of the same is reproduced as under:-

“Insofar as appropriate multiplier, the date of birth of the deceased as per driving licence was 16.6.1961. On the date of accident i.e. 14.12.2006, the deceased was aged 45 years, 5 months and 28 days and the tribunal has taken the age as 46 years. Since the deceased has completed only 45 years, the High Court has rightly taken the age of the deceased as 45 years and adopted multiplier 14 which is the appropriate multiplier and the same is maintained. Total loss of dependency is calculated at Rs.16,82,310/- (Rs.1,20,165/- x 14).”

23. Applying the aforesaid principle, the age of the claimant on the date of accident is required to be taken as 35 years. As per the multiplier chart approved by the Hon'ble Supreme Court, the appropriate multiplier applicable to the age group of 31 to 35 years is 16. The learned Tribunal has, therefore, rightly applied the multiplier of 16. Therefore, no inference is required on this count.

24. In view of the above, the present appeal is ***partly allowed*** and the award dated 13.09.2021 passed in the claim petition bearing MACP-176-2017 is modified to the extent that the appellant–Insurance Company shall satisfy the

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to it to recover the same from the owner and driver of the offending vehicle, in accordance with law.

25. Pending application (s), if any, also stand disposed of.

(SUDEEPTI SHARMA)
JUDGE

18.12.2025
Gaurav Arora

Whether speaking/non-speaking : Speaking
Whether reportable : Yes