

GAHC010098352022



2026:GAU-AS:3334

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : MACApp./267/2022

MD. JANIK ALI
S/O MAMUD ALI, R/O HURAKUCHI, (KARBALA), P.O. GOBINDAPUR, P.S.
AND DIST. GOALPARA, ASSAM

VERSUS

THE DIVISIONAL MANAGER, ORIENTAL INSURANCE CO. LTD. AND 2 ORS
BONGAIGAON DIVISION, P.O. AND P.S. BONGAIGAON, DIST. GOALPARA,
ASSAM.

2:SAIFUL ALI
S/O JASIMUDDIN ALI
R/O VILLAGE PANCHARATNA
P.O. GOBINDAPUR
P.S. AND DISTRICT GOALPARA
ASSAM
PIN 783101(OWNER)

3:MOFIDUL HOQUE
S/O SHARBESH ALI
R/O VILL HURAKAKUCHI
GOBINDAPUR
P.S. AND DISTRICT GOALPARA
ASSAM
PIN 78310

Advocate for the Petitioner : MR H DAS, MR. B C DEKA

Advocate for the Respondent : MR. R C PAUL,

BEFORE
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

Advocates for the Appellant : Mr. H. Das

Advocate for the respondents : Mr. R.C. Paul

Date on which judgment is reserved : 24.02.2026

Date of pronouncement of judgment : 05.03.2026

Whether the pronouncement is of
the operative part of the judgment : N/A

Whether the full judgment has been
pronounced : Yes

JUDGMENT AND ORDER (CAV)

Heard Mr. H. Das, learned counsel for the Appellant and learned counsel Mr. R.C. Paul for the respondents.

2. This appeal is directed against the judgment and order dated 22.07.2019 passed by the learned Member, MACT Goalpara in connection with MAC case No.328/2017 directing the Insurance company to pay a compensation of Rs.3,22,240/- only with interest @ 6% per annum from the date when the evidence of the claimant's side was closed. The appellant in this case is the claimant himself, Md. Janik Ali, who is aggrieved by the quantum of compensation awarded by the Tribunal. The Divisional Manager of Oriental Insurance Company, the owner of the vehicle involved in the accident, Saiful Ali and the driver of the vehicle, Mofidul Hoque are arrayed as respondent Nos. 1, 2

and 3 respectively.

3. It is contended by the claimant that the claimant used to work as a motor mechanic in a private garage but unfortunately the Tribunal did not consider the income of the claimant and computed the compensation, taking the notional income into consideration. The claimant has thus prayed for enhancement of compensation through this appeal. The appellant and the insurance company will be referred to, according to their original standing in the MAC Case No. 328/2017 i.e. as the claimant and insurer.

4. It is contended that the submission of the learned counsel for the insurance company that the income of the claimant was not proved, holds no water as the claimant was not cross-examined regarding his income. So stating, it is submitted that the claimant has proved his income. The claimant has also drawn the attention of this Court to the interlocutory application No.4185/2019, which clearly reveals the additional expenses accrued by the claimant. It is prayed that at present, the claimant is bedridden and his affidavit, which includes the additional expenses after the decision of the Tribunal in MAC Case No. 328/2017, may be considered.

5. *Per Contra*, learned Counsel for the Insurance Company laid stress in his argument that no salary certificate was produced by the claimant. The disability certificate was not proved by the authority. The disability certificate is vague as it is not clear from the certificate whether the claimant is suffering from permanent disability or temporary disability. The decision of the Tribunal warrants no interference as no infirmity could be deciphered in the decision of the Tribunal. The standard procedure to prove a certificate has not been properly followed. The Tribunal has correctly not accepted the income which was not proved by the claimant.

6. The genesis of the case was that on 27.08.2017, Janik Ali, the claimant was proceeding from Krishnai towards Karbala as a pillion rider on a motorcycle bearing registration No. ML-13-4760, and Mofidul Hoque was riding the motorcycle. As the motorcycle was driven in a rash and negligent manner, the motorcycle capsized at the PWD road near Harimura Tea Estate, and the pillion rider, Janik Ali, sustained severe injuries as a result of the accident. His left leg was also fractured, and he was immediately brought to the private chamber of Dr. P.K. Das, who examined him and advised him to take treatment in a hospital outside Goalpara. Immediately, the claimant then underwent treatment in Life Care Multi-Specialty Hospital and Trauma Centre from 28.08. 2017 to 13.09.2017, and again from 02.03.2018 to 10.03.2018, and from 11.08.2018 to 19.08.2018 in Apollo Hospital, Patna. An FIR was lodged by the claimant's brother-in-law, Maynul Haque, which was registered as Mornoi PS Case No.117/17 and charge sheet was laid against the driver of the motorcycle bearing registration No.ML-13- 4760 under Section 279/338 of the Indian Penal Code ('IPC' for short). This vehicle can thus be referred to as the 'offending vehicle'.

7. The claimant filed a petition under Section 166 of the Motor Vehicles Act, 1988, (MV Act for short) seeking compensation to the tune of Rs. 15 Lacs. The insurer, owner and the driver filed their written statements and contested the proceeding. The insurer denied all the averments including the contention that the accident was the result of rash and negligent act of the rider of the motorcycle. The insurance company questioned the validity of the driving licence and related documents which also includes effective insurance policy, FIR, seizure list, police report etc. The insurance company contended that the compensation claimed by the claimant was excessive. The driver and the owner

jointly submitted their written statement and they prayed for exoneration as the driver was carrying a valid driving licence and the offending vehicle was duly insured, vide policy No.322390/31/2018/1612, which, as claimed by the OP Nos. 2 and 3 was valid at the time of the accident.

8. To substantiate his stance, the claimant adduced the evidence of two witnesses. He adduced his evidence as P.W. 1 and the evidence of Dr. Subodh Nath as P.W.-2. He also exhibited the following documents:

- 1. Ext. no-1: Accident Information Report,*
- ii. Ext. no-2: Certified copy of the F.I.R,*
- iii. Ext. no-3: Copy of the Charge sheet,*
- iv. Ext. no-4: Certified copy of seizure list,*
- v. Ext. no-5: Injury report (certificate relating to injury),*
- vi. Ext. nos-6 to 8: Discharge slip from Life Care Multispeciality Hospital, Patna,*
- vii. Ext. nos-9 to 84: cash memos,*
- viii. Ext. no-85: Certificate of 60% disablement,*
- ix. Ext. no-86: X-Ray report,*
- x. Ext. nos-87 to 92: X-ray Plates.*

9. Through his evidence-in-chief, the appellant stated that on 27.08.2017, at about 1 p.m. he along with his friend were proceeding on the motorcycle bearing registration No.ML-13-4760 (offending vehicle). As the driver of the motorcycle was driving the offending vehicle with excessive speed and in a rash and negligent manner, the vehicle met with an accident at Harimura Tea Estate. As a result, he sustained injuries on his body and his left leg got fractured. He was forwarded to Dr. PK Das but the doctor advised him to take better

treatment outside Goalpara. He then underwent treatment at Life Care Multi-Specialty Hospital and Trauma Center from 28.08.2017 upto 13.09.2017 and as he did not recover from the treatment, he again underwent treatment from 02.03.2018 to 10.03.2018 and again from 11.08.2018 to 19.08.2018 he underwent treatment at Apollo Hospital in Patna. However, he did not recover completely after treatment.

10. Relating to his treatment, the appellant adduced the evidence of the Senior Medical and Health Officer Dr. Subodh Nath as PW- 2 who stated through his affidavit-in- evidence that he was a member of the District Standing Medical Board, Goalpara and the injured person Janik Ali applied to the Medical Board personally. The District Standing Medical Board in its meeting held at the Office of the Director of Health Services, Goalpara on 29.03.2018, found the following:-

“That Janik Ali suffered from RTA transverse fracture in mid of the shaft (left) of femur lower fragment, delia femur, lower fragment displays, upward, forward and outward. The Medical Board came to the conclusion that he suffered from 60% physical disability, which is a permanent disability.

11. PW-2 also stated that the Medical Board consisted of several members, and he was one of the members. The medical board examined Janik Ali and arrived at the decision. He proved Exhibit-85 as the permanent disability certificate issued by the Chairman of District Standing Medical Board, Goalpara, and he identified the signature of the Chairman of District Standing Medical Board as Exhibit 85 (i). He proved his signature as Exhibit 85-(ii).

12. PW-2 further deposed that he was present as a Member of the District Standing Medical Board meeting, which was held on 29.03.2018 in the office

premises of the Joint Director of Health Services, Goalpara. On that day, the injured Janik Ali appeared before the Board to ascertain his disability due to the injuries sustained by him. The Board examined his physical condition and also scrutinized the medical documents produced by him and assessed his disability to the extent of 60%. He proved the disability certificate issued by the District Standing Medical Board in favour of the injured person, as Exhibit-85.

13. In his cross- examination, he (PW-2) stated that although his statement reveals that Exhibit-85 is a permanent disability certificate, but the word 'permanent disability' was not mentioned in Exhibit 85. The Board learnt from the injured person that he sustained those injuries in a road traffic accident. The Board examined the injured person after one and a half years of the accident. The age of the injury was not written on Exhibit-85. The treatment undertaken by the injured person was not mentioned in the disability certificate. As the Board is not concerned with the treatment taken by the injured person, the board is not required to mention if the injuries were properly diagnosed. If the fixation gets removed, the injuries may be cured or the injured may not completely recover from the injuries. The quantum of disability may decrease with the passage of time. The quantum of disability was assessed by the Board to be 60%.

14. At this juncture, it is apt to mention that the learned counsel for the insurance company has disputed the disability certificate. It is argued that the disability certificate was not in a proper format. It is a handwritten disability certificate and disability was not termed as permanent disability. It was certified that the injured person suffered from 60% disability, but the type of disability whether permanent or temporary disability was not clarified through the disability certificate.

15. *Per contra*, the learned counsel for the claimant laid stress in his argument that 60% injury is nothing but permanent disability. A formal certificate was issued by the Board. There is nothing to disbelieve the testimony of the medical officer who was also one of the members of the Board and who had proved his signature on the disability certificate. In this regard, the Tribunal held that the claimant submitted and exhibited 60% disablement certificate vide Exhibit-85 but he did not mention in his evidence that he had appeared before the District Standing Medical Board, and the Board declared that the injury caused 60% of his physical disablement. It was held by the Tribunal that :-

“(VI) As per Ext. no-85 the claimant appeared before the District Standing Medical Board on 29.03.2018 in order to assesses the disability caused due to the alleged accident. The board after due consideration of the injuries sustained by him issued disability certificate (Ext. no-85) whereby declared that due to injuries sustained by him caused him about 60% disability (permanent or temporary is not mentioned).

(VII) PW-2, has deposed in cross examination that, the quantum of disability may be decreased in the passage of time.

(VIII) From the medical evidence on record & considering the type of injuries sustained by the claimant (PW-1), I am of the view that such injuries has caused partial disability which may be calculated at 25% temporary disability. So I do hold that, the claimant became 25% physically disabled due to injuries sustained by him in the accident. As the claimant sustained 25% disability for the aforesaid Injures and for such disability, it would definitely reduce the earning capability.”

16. In the case on hand, as the disability was not described by the Medical

Board as permanent disability, the learned Tribunal held that the injuries may be calculated at 25% temporary disability and thereby held that the claimant who was a motor mechanic had suffered 25% physical disability which would result in 25% loss of earning capability.

17. Learned counsel for appellant has relied on the decision of the Supreme Court in *Aabid Khan-Versus-Dinesh and others* reported in (2024) 6 SCC 149 wherein it has been observed that :-

“7. This Court in the case of Raj Kumar v. Ajay Kumar and Another, (2011) 1 scc 343 has observed:

"16. The Tribunal should not be a silent spectator when medical evidence is tendered in regard to the injuries and their effect, in particular, the extent of permanent disability. Sections 168 and 169 of the Act make it evident that the Tribunal does not function as a neutral umpire as in a civil suit, but as an active explorer and seeker of truth who is required to "hold an enquiry into the claim" for determining the "just compensation". The Tribunal should therefore take an active role to ascertain the true and correct position so that it can assess the "just compensation". While dealing with personal injury cases, the Tribunal should preferably equip itself with a medical dictionary and a handbook for evaluation of permanent physical impairment (for example, Manual for Evaluation of Permanent Physical Impairment for Orthopaedic Surgeons, prepared by American Academy of Orthopaedic Surgeons or its Indian equivalent or other authorised texts) for understanding the medical evidence and assessing the physical and functional disability. The Tribunal may also keep in view the First Schedule to the Workmen's Compensation Act, 1923 which gives some indication about the extent of permanent disability in different types of injuries, in the

case of workmen."

"10. In the light of the afore-stated position of law explained when the medical evidence tendered by the claimant is perused, we are of the considered view that tribunal and the High Court committed a serious error in not accepting the said medical evidence and in the absence of any contra evidence available on record, neither the tribunal nor the High Court could have substituted the disability to 10% as against the opinion of the doctor (PW-5) certified at 17%. In that view of the matter the compensation awarded under the head 'loss of income' towards permanent disability deserves to be enhanced by construing the whole body disability at 17%."

18. Reverting back to this case, it is held that the Medical Officer, who was a member of the Board, stated that the disability was of permanent nature. In the light of the decision of the Supreme Court in Aabid Khan (supra), it is held that the decision of Tribunal holding the disability to be of temporary nature, causing 25% of physical disablement affecting the earning capacity to that scale of disablement, calls for modification.

19. It has to be borne in mind that the claimant was a motor mechanic and movement of limbs is necessary for a motor mechanic. 60% of disablement would affect the earning capacity of a motor mechanic to a great extent. Whether temporary or permanent disablement, 60% of the physical disablement resulting from a major fracture of his femur will restrict movement to an extent, which will affect the income and earning capacity of a victim, at least to the tune of 50 percent.

20. It has to be borne in mind that the Medical Officer as PW-2 deposed in his cross-examination that after one and a half years, the victim came for assessment of his physical disability. The Board meeting which was held after

one and a half years, confirmed that the victim was still suffering from 60% of disablement. It is thus apparent that even after one and a half years, the victim was suffering from 60% of physical disablement, which indicates the slow recovery of the victim from the accident. The oral evidence of a member of the Medical Board cannot be ignored in toto. The Medical Officer, PW-2 stated that the victim had suffered from 60% permanent disability. Although it was not mentioned in the certificate marked as Exhibit-85 that the disability was of a permanent nature, yet the assessment of a medical officer, who was a member of the Board, that the victim had suffered from 60% disability cannot be ignored in toto.

21. Be that as it may, without considering the disability of the injured person to be 60% permanent disability, it can also be considered to be 60% temporary disability instead of 25% temporary disability.

22. It has also been observed by the Supreme Court in the case of Aabid Khan (supra) that :-

“8. In the case of Laxman Alias Laxman Mourya v. Divisional Manager, Oriental Insurance Co. Ltd. and Another, 2011 10 scc 756, this Court observed:

"15. The ratio of the above-noted judgments is that if the victim of an accident suffers permanent or temporary disability, then efforts should always be made to award adequate compensation not only for the physical injury and treatment, but also for the pain, suffering and trauma caused due to the accident, loss of earning and the victim's inability to lead a normal life and enjoy amenities, which he would have enjoyed but for the disability caused due to the accident."

23. In view of the foregoing discussions, it is thereby held that the victim had suffered from 60% temporary disability, resulting in physical disability of 50% and consequential loss of income to the tune of 50%. In the light of the

decision of the Hon'ble Supreme Court in Aabid Khan (supra) and the decision of the Supreme Court in *Rajkumar v. Ajay Kumar and another reported in (2011) 1 SCC 343*, the first schedule of Employee's Compensation Act, 1923, is also taken into consideration to assess the loss of income. If the Part II of Schedule I of the Employee's Compensation Act, 1923, is taken into consideration, a comparison can be made to Sl. No. 23 which describes a comparatively minor form of injury resulting in permanent and partial disablement which affects the loss of earning capacity of the injured person.

24. In this case, as the Medical Board did not mention the nature of disablement whether permanent or temporary, this Court deems it appropriate to assess the percentage of loss of earning capacity resulting from temporary disablement to the tune of 50% after a comparison being made to Sl. No. 23 which describes amputation through one foot proximal to the metatarsophalangeal joint. The gravity of the fracture sustained by the injured person on his left femur appears to be more grave than the permanent injury described in Sl. No. 23 of Part II of Schedule I of the Employee's Compensation Act.

25. In view of the foregoing discussions, it is thereby held that in case of an injured person who sustained "temporary partial disablement", his earning capacity will be affected by 50% in comparison to his earlier earning capacity when he was fit and had no restriction of mobility before the accident.

26. Through additional affidavit, the learned counsel for the claimant submitted that at present the claimant is suffering from 100% disability and he is bedridden. The affidavit was sworn in by the claimant's wife, Komala Khatun on behalf of the claimant. The additional expenses incurred by the claimant after the decision of the Tribunal has also been brought forward by the claimant.

Certain documents relating to the expenses of his treatment and the type of treatment underwent by the claimant has been submitted along with the additional affidavit.

27. The learned counsel for the Insurance company however, laid stress in his argument that this additional affidavit cannot be taken into consideration at this stage because at the stage of appeal, the evidence has to be introduced as per Order XLI Rule 27 of the CPC.

28. I find force in the argument of the learned counsel for the Insurance company that an appeal is continuation of a suit. This appeal is continuation of the Motor Accident Claims case, but in a beneficial legislation a summary proceeding can be adopted for the benefit of the unfortunate motor accident victims.

29. Section 169 of the Motor Vehicles Act 1988 reads :-

“169. Procedure and powers of Claims Tribunals.—(1) In holding any inquiry under section 168, the Claims Tribunal may, subject to any rules that may be made in this behalf, follow such summary procedure as it thinks fit...”

30. In this case, the claimant is aggrieved only by the quantum of compensation and he has prayed only for the enhancement of the compensation. So the points for determination in this case would be:

I) Whether the learned Tribunal has erroneously decided the disability to be temporary disability resulting in 25% physical disability affecting the income, and

II) by considering the income of a motor mechanic to be only Rs. 3000/- (Rupees Three Thousand) per month.

31. Regarding the income of the claimant, the learned counsel for the appellant/claimant laid stress in his argument that the income of the motor

mechanic was wrongly assessed to be Rs.3000/- (Rupees Three Thousand). A motor mechanic earns much more than Rs.3,000/- (Rupees Three Thousand). The income of the appellant was Rs.10,000/- (Rupees Ten Thousand) at the time of the accident and this may have increased twofold at this hour, because in recent times we have seen rise in prices and corresponding rise in income. It is further contended by the claimant that the interest was assessed at a very low rate of 6%, that too from the date of submission of evidence, which is bad in law. The rate of interest has to be calculated from the date of filing of the petition. It is also argued that the claimant who had to incur expenses of Rs.4,00,000/- (Rupees Four Lacs) for his treatment is highly prejudiced as the expenses of his treatment was wrongly taken as Rs.1,41,234/- (Rupees One Lac Forty One Thousand Two Hundred and Thirty Four).

33. In this case, the fact that the claimant was a motor mechanic was not disputed. In the case of Aabid Khan (supra), the income of a motor mechanic was taken to be Rs.6,500/- (Rupees Six Thousand and Five Hundred) as the accident occurred on 23.04.2013. In this present case, the accident occurred in the year 2017. Thereby, in the light of the decision of the Supreme Court in Aabid Khan's case (supra), the income of the claimant is taken to be Rs.6,500/- (Rupees Six Thousand and Five Hundred) per month as a motor mechanic.

34. In the foregoing discussions, it has already been held that the loss of income owing to physical disability is assessed @ 50%.

35. It would also be apt to reiterate at this juncture that the claimant was present before the Medical Board after one and a half years and at that time his physical disability was assessed @ 60%. The medical documents and x-ray plates, are before this Court and this Court cannot be oblivious of the fact that the victim had sustained a major fracture on his femur which has restricted his

mobility affecting his performance as a motor mechanic. This will indeed reduce his efficiency resulting in a reduction in his income.

36. All the documents are not required to be scrutinized. It would suffice to consider the documents relating to the treatment of the injured claimant. Exhibit-5 to Exhibit-92 are certain documents relating to the treatment of the claimant after his accident. The documents include the discharge tickets, the medical bills, the receipts and travel expenses, etc. The total expenses incurred by the claimant for his treatment sums up to Rs.3,12,919.23 (Rupees Three Lacs Twelve Thousand Nine Hundred Nineteen and Twenty Three Paisa) The age of the victim and the multiplier have not been disputed in this case. The multiplier is taken as 14 after considering the age of the claimant to be within the range of 41-45 years.

37. Having considered the facts and circumstances of this case and the nature of injuries sustained by the claimant and after scrutinizing the expenditure incurred thereof, the compensation which is to be awarded to the claimant is computed as hereunder :-

(i) Medical expenditure	= 3,03,300.23
(ii) Conveyance	= 9,619.00
(iii) Loss of Income $6500 \times 12 \times 50\% \times 14$	= 5,46,000.00
(iv) Pain, shock and suffering	= 30,000.00
Total	= 8,88,919.23

38. Before parting with this record, it is also pertinent to mention that the submission of the appellant that the appellant is still under treatment and he has not recovered completely and he is at present bedridden, has not been ignored, despite the fact that the submission was not backed by proper

evidence as per law. To mitigate the pain and suffering, the interest of 6% is to be added along with the total compensation from the date of filing of the petition.

39. In view of my foregoing discussions, the judgment and order dated 22.07.2019 passed by the learned Member, MACT, Goalpara in connection with MAC Case No. 328/2017, is modified and the Insurance Company i.e. the respondent No. 1, is directed to pay the remaining amount with the remaining interest accrued, as it is submitted that the Insurance Company had already paid the compensation in compliance with the judgment and order of the Tribunal dated 22.07.2019. The amount already paid with the interest accrued is to be deducted from Rs.8,88,919.23 along with the interest to be paid from the date of filing of the claim petition.

40. In terms of the above observation, this appeal stands disposed of.

41. The original records of the Tribunal is to be returned back.

JUDGE

Comparing Assistant