IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 875 OF 2004

Azim Abdulsab Bagwan,
Age: 35 years, Occu: Cleaner,
At present Nil, R/o Nilanga,
Dist. Latur.

.....APPELLANT
(Ori. Claimant)

VERSUS

1. Ayub s/o Nizamsab Bagwan,
Age: Major, Occu: Business,
R/o Kalmatha Tq. Omerga,
At present Kasab Mohalla Peth Galli,
Nilanga, Dist. Latur.

2. The New India Assurance Co. Ltd.
Through its Branch Manager,
Branch at Chandra Nagar, Latur

.....RESPONDENTS

Mr. Fayaz K. Patel, Advocate for Appellant
Mr. V. N. Upadhye, Advocate for Respondent no.2

CORAM : AJIT B. KADETHANKAR, J.
RESERVED ON : 26TH OCTOBER, 2026
PRONOUNCED ON : 29TH OCTOBER, 2026

JUDGMENT :-

. Preface:

"A 'Cleaner' of a heavy truck, who sustained severe fracture injuries and shortening of leg with insertion of iron rod in the leg, can be said to have sustained 100% loss of earning capacity as a Cleaner on account of functional disability?" is the question to be answered in this case.

2. Subject matter:

2.1. Feeling aggrieved by the judgment and order dated 11.12.2003 passed by learned Commissioner (Workmen's Compensation) @ Judge Labour Court, Latur ("Trial Court" for brevity) in Workmen Compensation Application No.78 of 1999, the claimant is in appeal before this Court.

2.2. The claimant is aggrieved with the findings of the trial court, whereby the loss of earning capacity is held merely at 25% irrespective of the clear evidence on record. The substance of the appeal is that the findings of the Trial Court are perverse to the medical evidence on record.

3. Facts of the case:

3.1. At the relevant time, the appellant was serving as a Cleaner on a heavy truck bearing number MH-25-8830 owned by respondent No.1 and insured with respondent No.2. On 28.07.1999, while the appellant was travelling in the insured truck in his capacity as a Cleaner, the truck collided with a stationed MSRTC bus. The appellant sustained grievous injuries in the accident including fracture injuries for which he had to undergo surgeries. Resultantly, the appellant sustained shortening of his left leg and some other disabilities.

3.2. Alleging that the accident occurred "in the course of and out of his employment" with respondent No.1, the appellant filed a claim under the Workmen's Compensation Act, 1923 before the Trial Court. The responding parties defended the claim by filing their respective written statements. The employer accepted Employer-Employee relationship, however sought insurance protection from respondent No.2.

3.3. The insurance company denied the claim on all available defenses. During the trial, the claimant examined himself and also examined an Orthopedician to prove the disability and the adverse impact of disability on the earning capacity. The evidence was not countered by the responding side by cross-examining him. The responding party did not adduce any evidence in rebuttal. After hearing the parties, the Trial Court partly allowed the claim, however granting only compensation holding the loss of earning capacity at 25%. As such against these findings, the claimant is before this Court.

4. <u>Submissions:</u>

4.1. Mr. Fayaz K. Patel, learned Advocate for the claimant/appellant submits that the only issue in this case is the quantum of compensation. It is submitted that the medical

evidence tendered by the appellant and not rebutted by the responding side clearly shows that the appellant has lost his earning capacity to work as a Cleaner. It is submitted that the findings of the Trial Court are perverse to the medical evidence. That in absence of any evidence in rebuttal, as also without being a medical expert to take substantive exception to the statements made by the Doctor on oath, the Trial Court erred in granting deficit award of compensation. To conclude, Mr. Patel, learned Advocate submits that this is a fit case wherein the claim deserves to be allowed in *toto*.

4.2. Learned advocate for the appellant relied upon the Judgment and Order dated ***20.08.2026*** passed in ***First Appeal No.874 of 2004***. In this case, as against the permanent disability @ 18%, the Trial Court granted compensation holding loss of earning capacity @ 25%. This Court, observing that the Trial Court held that the claimant therein sustained full loss of earning capacity. Shortening of the leg, improper alignment of bones and bend in the right leg of the claimant were considered while holding that he lost 100% of his earning capacity as a Cleaner.

4.3. Reliance is also placed by the appellant on various judgments including ***2006(6) Mh.LJ [National Insurance Co. Ltd. Vs. Rama Shinde and ors.]***, ***(2012) 2 SCC 267 [Mohan Soni Vs. Ram Avtar Tomar and ors.]***, Judgment and Order dated ***28.07.2015*** passed by this Court in ***First Appeal No.1912 of 2014 [Vyankatesh Nadar Vs. Mr. Ram Gangane]***, Judgment and Order dated ***04.07.2006*** passed by this Court in ***First Appeal No.415 of 1998 [National Insurance Co. Ltd. Vs. Rama and ors.]***, ***AIR 1976 SCC 222 [Pratap Narain Singh Deo Vs. Shrinivas Sabata and another]***, Judgment and Order dated ***17.07.2023*** passed by the Hon'ble Supreme Court in ***Civil Appeal No.4492 of 2023 [Indra Bai Vs. Oriental Insurance Co. Ltd. and ors.]***, and lastly on a Judgment and Order Dated 12.02.2025 in ***Special Leave to Appeal (Civil) No.25237 of 2023 [Pappu Singh Vs. National Insurance Co. Ltd. and another]***. All these judgments lay down that the loss of earning capacity would be corresponding to the adverse impact of the injuries on the earning capacity of the claimant in the same earlier role and with same earlier efficiency.

4.4. None for respondent No.1.

4.5. Mr. V. N. Upadhye, learned Advocate for respondent No.2/Insurance Company submits that the Trial Court did not commit any error. He would stand by the reasoning rendered by the Trial Court to grant compensation as is awarded in the impugned order. Mr. Upadhye submits that the Trial Court rightly observed at paragraph No.15 that the claimant could earn income by performing some other functional work, which would yield atleast lower income.

4.6. Mr. Upadhye, learned Advocate representing the insurer places reliance on a judgment reported at ***AIR 2008 SC 2396 (Rajesh Kumar @ Raju Vs. Yudhvir Singh and Anr.)***. He disputes the credibility of the permanent disability certificate. Mr. Upadhye submits that the case is not fit at all for any enhancement and the appeal deserves to be dismissed.

5. <u>Consideration:</u>

5.1. I have heard both the sides extensively. With the able assistance of both the parties, I have also gone through the Record and Proceedings of the case. This court on 13.08.2026 formulated a substantial question of law as follows:

(I) Whether the findings recorded by learned Compensation Commissioner with respect to loss of earning are perverse, having regard to evidence of Doctor which suggest that claimant is unable to walk without support due to accidental injuries and cannot stand naturally on both legs for longer period of time?

In the light of above, I now record my findings as below:

5.2. The Trial Court has accepted that the claimant was working as a Cleaner on a heavy truck. Employer- Employee relationship is upheld by the Trial Court. Pertinent to note, the CW- Dr. Jadhav of Civil Hospital was not cross examined by the responding side. The permanent disability is certified to be @ 22%. The permanent disability certificate was proved by the claimant. Neither the employer nor the insurer has challenged those finding.

5.3. Obviously, the injuries sustained by the claimant/appellant are not mentioned in either part of the Schedule-I to the Employee's Compensation Act 1923. Hence holding that the appellant sustained permanent partial disablement, the Trial Court fixed the loss of earning capacity @ 25%.

5.4. It can not be ignored that the job of a Cleaner on a heavy truck includes numerous rough and heavy physical work. It includes sometimes lifting heavy material, removing the punctured wheels, and all such work ancillary to the use of a truck. For all these purposes absolute fitness of a Cleaner is necessary to work at fullest ability.

5.5. In the case in hand, as observed above the question is to see whether the loss of earning capacity is calculated corresponding to the nature of injuries and the job of the claimant.

5.6. It is not in dispute that the appellant was working as a Cleaner on a truck. He sustained fracture injuries resulting into permanent partial disability.

5.7. Dr. Vishwanath Jadhav (Claimant Witness) at Exhibit-O-12 deposed that the claimant sustained fracture to Tibia and Fibula, sustained stiffness to left ankle, and left leg shortening by One and Half Centimeter. He clearly stated that the claimant can not walk without support nor can stand naturally on account of the accidental injuries. The said witness also produced X-ray on record at Exh.U-26. That, the claimant won't be able to the do the job of cleaner.

5.8. The evidence of this witness remained unshaken for want of any cross examination by the responding side. The said witness is an Orthopedic Surgeon.

5.9. The Hon'ble Supreme Court in the case of ***Raj Kumar Vs. Ajay Kumar and Anr.*** reported at ***2010 SCC OnLine SC 1166 at page 352*** observed thus:

> ***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 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.*

5.10. The Hon'ble Supreme Court at sub para No.(iii) [supra] observed that the loss of earning capacity is something that will have to be assessed by the Tribunal with reference to the evidence in entirety.

5.11. For that, I rely on the principle laid down by the Hon'ble Supreme Court in the case of ***Pappu Singh*** (supra). At paragraph no.8 of the judgment, their Lordships have held as under:

> *8. Thus, the position of law for granting compensation under the Workmen's Compensation Act is very clear. In light of the provisions and purpose of the Act, we reiterate that functional disability caused due to injury shall be considered while awarding compensation. The threshold for calculating functional disability is whether the injured person is rendered disable to continue the vocation he was engaged in, at the time of their accident.*

5.12. Thus, I find that the claimant/appellant lost every ability and capacity to resume the work of a 'Cleaner'. This is full functional disability. In view of this, the Trial Court was expected to fix the compensation not merely by arithmetical calculations, but assessing the actual functional disability which in my considered view would be at its fullest.

5.13. So far as the reliance placed by learned Advocate for Respondent No.2 on ***Rajesh Kumar Vs. Yudhvir Singh*** (supra) is concerned, with due respect I observe that the same shall not be of any avail to the relying party on account of substantial difference in the facts; as also in the light of the latest pronouncements by the Hon'ble Supreme Court.

5.14. I am constrained to observe that the findings of the Trial Court as are relied upon by Mr. Upadhye at paragraph No.15 that the Claimant could earn his livelihood at some lower scale by doing some alternate work depicts grotesque analogy, which can never be acceptable in the matter of a social beneficial legislation. If this is accepted, it would frustrate the compensation scheme from its roots itself.

5.15. In view of the above discussion, I am disposed to think that the Substantial Question of Law framed by this Court needs to be answered positive. I beneficially place my hands on the Judgment and Order dated 20.08.2026 passed in First Appeal no.874 of 2004, and the citations on which the appellant has placed reliance. I am in full agreement with the view expressed in the cited cases.

5.16. It has sufficiently brought on record by the appellant in the evidence that he has lost his every capacity to work as a Cleaner due to the accidental injuries. Hence, in view of the Judgment and Order passed by the Hon'ble Supreme Court in the case of ***Pappu Singh*** (supra), I hold that the appellant is entitle for compensation due to 100% loss of earning capacity. The findings of the Trial Court that the appellant suffered only 25% of loss of earning capacity are liable to be struck down.

5.17. So far as appellant's argument to apply the interest @ 12% is concerned, the same stands rejected. I accept the arguments advanced by learned advocate for the insurer – Mr. Upadhye that the rate of interest would be the same which prevailed while the impugned Judgment and Order was passed i.e. 9% per annum.

5.18. Hence I pass following order:

ORDER

I. First Appeal stands allowed;

II. Impugned Judgment and Award delivered by learned Judge of Labour Court, Latur @ Commissioner for Workmen's Compensation in Workmen Compensation Application No.78 of 1999 dated 11.12.2003 is modified holding the appellant entitled for compensation @

Rs.2,24,618.4/- together with interest @ 9% p.a. till its recovery. The respondents to deposit the compensation in this Court within a period of 06 weeks from today;

III. Any amount already deposited by respondent No.2 shall be adjusted while depositing the compensation;

IV. To the extent of above, the impugned judgment and award stand modified;

V. Modified award be drawn.

VI. Civil Application if any, stands disposed of.

(AJIT B. KADETHANKAR, J.)

Rushikesh/2025