IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

FAO (MVA) No.342 of 2018

Date of Decision : 31.10.2026

Shri Ram General Insurance Company Limited

…… Appellant

Versus

Gurmesh Lal and others

……Respondents

Coram:

The Hon'ble Mr. Justice Bipin Chander Negi, Judge

Whether approved for reporting?[1]

For the Appellant : Mr. Jagdish Thakur, Advocate.

For the respondents : Mr. Amrinder Singh Rana, Advocate, for respondent No.1.

None for respondents No.2 & 3.

Bipin Chander Negi, Judge (oral)

The present appeal has been preferred against the award dated 04.04.2018, passed by the Motor Accident Claims Tribunal-I, Solan, Himachal Pradesh, in ***MAC Petition No.18-NL/2 of 2013***, titled ***Gurmesh Lal vs. Sushma Devi and others*** whereby the claim petition preferred by respondent No. 1, has been allowed, the appellant-Insurance Company has been held liable to pay compensation to the tune of Rs. 22,68,479/- along with interest at the rate of 6% per annum from the date of filing of the petition till realization. Other than the aforesaid, litigation expenses to the tune of Rs. 10,000/- have also been quantified.

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[1] **Whether reporters of Local Papers may be allowed to see the judgment?**

2. The accident, in the case at hand, had occurred on 19.03.2013. Present respondent No. 1/claimant at the relevant point of time was driving a motorcycle and was on his way from Sri Naina Devi Ji Temple to Nalagarh along with his friend. At about 7:00 a.m., when the motorcycle reached near Karmala Mor on National Highway-21, it was hit by a truck bearing registration No. HP-69-3162 coming from the opposite side. The offending truck was stated to be driven by present respondent No. 3 (respondent No. 2 before the learned Tribunal), in a rash and negligent manner. On account of the accident, FIR No. 36 of 2013 dated 19.03.2013 was registered at Police Station Kot-Kehloor, District Bilaspur, under Sections 279, 337 and 304-A of the Indian Penal Code.

3. Respondent No. 1/claimant was 43 years of age and was running a Maniyari shop. The disability certificate (Exhibit PW-3/A) reflects 70% permanent disability in the form of amputation below the knee in the right leg. The certificate was issued by Dr. Kuldip Jaswal, B.M.O., CHC Nalagarh, who appeared before the learned Tribunal as PW-3. Based on the evidence so submitted, the loss of earning capacity on account of permanent disability was assessed by the learned Tribunal at 70%.

4. The only contention urged on behalf of the appellant-Insurance Company is in respect of the assessment of the permanent functional disability by the learned MACT-I, Solan, in the case at hand. A perusal of the disability certificate (Exhibit PW-3/A) reflects that the disability in the case at hand is permanent and has been assessed at 70%. However, when the Doctor who issued the same, namely Dr. Kuldip

Jaswal (PW-3), appeared before the Tribunal, he specifically deposed in his cross-examination that the disability assessed in the certificate is not for the whole body. Based on the aforesaid, it is contended that the learned Tribunal has wrongly assessed the functional disability at 70% for working out the loss of future earning capacity.

5. On the contrary, learned counsel appearing on behalf of respondent No. 1/claimant has contended that there is no infirmity in the assessment of permanent functional disability made by the learned MACT-I, Solan. In support of his contention, reliance has been placed on the decisions of the Apex Court, in ***Raj Kumar vs. Ajay Kumar and another (2011) 1 SCC 343; Syed Sadiq and others vs. Divisional Manager, United India Insurance Company Limited, (2014) 2 SCC 735; and Mohd. Sabeer alias Shabir Hussain vs. Regional Manager, U.P. State Road Transport Corporation (2023) 20 SCC 774***. It has been contended that the amputation of the leg has gravely impaired the working of the claimant in running his Maniyari shop.

6. All injuries do not result in a loss of earning capacity. Loss of earning capacity is not the same as the percentage of permanent physical disability. Loss of earning capacity has to be assessed by the Tribunal with reference to the evidence in its entirety. A Doctor who treated the injured claimant can only assess the permanent physical impairment. A permanent disability may result in different percentages of loss of earning capacity in different persons depending upon the nature of their profession, vocation, day-to-day duties etc.

7. In this respect, reference can be made to the judgment of the Hon'ble Supreme Court in ***Raj Kumar vs. Ajay Kumar and another (2011) 1 SCC 343.*** The relevant extract whereof reads as follows:-

> *"**19.** We may now summarise the principles discussed above :*
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> *(i) All injuries (or permanent disabilities arising from injuries), do not result in loss of earning capacity.*
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> *(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).*
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> *(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."*

8. The judgment referred to by respondent No.1/claimant in ***Syed Sadiq*** pertains to the case of a vegetable vendor whose leg, in an accident, had been amputated. Taking into consideration the fact that even post amputation, the claimant therein kept fending for his livelihood, for which he, using his mobility, was required to bring vegetables to the market place, hence therein, the disability was assessed at 85% qua loss

of income. The relevant extract of the judgment relied upon reads as under:-

> *"7. Further, the appellant claims that he was working as a vegetable vendor. It is true that a vegetable vendor might not require mobility to the extent that he sells vegetables at one place. However, the occupation of vegetable vending is not confined to selling vegetables from a particular location. It rather involves procuring vegetables from the whole-sale market or the farmers and then selling it off in the retail market. This often involves selling vegetables in the cart which requires 100% mobility. But even by conservative approach, if we presume that the vegetable vending by the appellant/claimant involved selling vegetables from one place, the claimant would require assistance with his mobility in bringing vegetables to the market place which otherwise would be extremely difficult for him with an amputated leg. We are required to be sensitive while dealing with manual labour cases where loss of limb is often equivalent to loss of livelihood. Yet, considering that the appellant/claimant is still capable to fend for his livelihood once he is brought in the market place, we determine the disability at 85% to determine the loss of income."*

9. Other than the aforesaid, learned counsel appearing on behalf of respondent No. 1/claimant has further placed reliance on ***Mohd. Sabeer alias Shabir Hussain vs. Regional Manager, U.P. State Road Transport Corporation (2023) 20 SCC 774***. In the said case, the claimant was a scrap dealer who worked out of his shop. The claimant therein had suffered permanent disability of 70% on account of amputation of the right lower limb amongst other injuries. The High Court

therein had scaled down the functional disability to 35%. The Apex court had set aside the aforesaid assessment so made by the High Court. While setting aside the same, the Apex Court was of the view that the claimant, in order to earn his income was required to move around and on account of amputation of the leg, the claimant therein could not drive on his own, hence, hindering his mobility. Thus, disability therein had substantially impacted the earning capacity of the claimant, and therefore, for the purpose of future earning capacity, disability was assessed at 60%. The relevant extract thereof reads as under:-

> *"15. The Appellant herein has suffered permanent disability of 70% and has an amputated right lower limb amongst other injuries. The High Court has wrongly taken the view that the Appellant has only suffered 35% functional disability. The Appellant is not a salaried person but is self-employed who manages his business. For the Appellant to be able to augment his income, he is most definitely required to move around. The Appellant can also not drive on his own, which hinders his mobility further. This proves that the functional disability of the Appellant will severely impact his earning capacity, and the 35% functional disability calculated by the High Court is incorrect in the facts and circumstances of the case and in our view the loss of future earning capacity must be calculated at 60%.*

10. In the present case, respondent No. 1/claimant is running a Maniyari shop. Although the disability certificate (Exhibit PW-3/A) reflects permanent physical impairment to the extent of 70%, the same is not with respect to the whole body, as deposed by Dr. Kuldip Jaswal (PW-3) in his

cross-examination. The case of the claimant is akin to that of ***Mohd. Sabeer's case*** (supra). Hence, for the reasons assigned in ***Mohd. Sabeer's case*** (supra), the permanent disability assessed at 70% on account of amputation below the knee in the right leg is set aside. The same for the purpose of working out the loss of future earning capacity is assessed at 60%.

11. In view of the aforesaid, taking into account the annual income of the claimant, which is assessed at Rs. 1,20,000/-, the annual loss of earning capacity on account of permanent functional disability assessed at 60% would now come to Rs. 72,000/- per annum. Applying the multiplier of 14, the loss of future earnings is re-assessed at Rs. 10,80,000/- (Rs. 72,000/-X 14), instead of Rs. 11,76,000/- as awarded by the learned Tribunal.

12. The rest of the award passed by the learned Tribunal shall remain intact. The appeal stands disposed of in the aforesaid terms.

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

(Bipin Chander Negi)
October 31, 2026 **(KS)** **Judge**