HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT JAMMU

Reserved on: 21.07.2026
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Whether the operative part or full Judgment is pronounced: **Full**

Mac App No. 177/2024 (O&M)

New India Assurance Co. Ltd. …..Appellant(s)/Petitioner(s)

Through: Mr. Amrit Sarin, Advocate

Vs

Parvaiz Ahmed Bhat and others ….. Respondent(s)

Through: Mr. Arjun Mengi, Advocate for R- 1

CORAM: HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE

JUDGMENT

1. The instant appeal is directed against the award dated 10.08.2024 passed by the MACT Tribunal, Ramban (for short, the "Tribunal"**)** in the claim petition titled "Pervaiz Ahmed Bhat vs. General Manager, New India Assurance Company Ltd. and Others," whereby the learned Tribunal awarded compensation of Rs. 52,79,945/-**,** along with interest at the rate of 7.5% per annum from the date of institution of the claim petition till the realization of the award amount, in favour of respondent No. 1 and against the respondent-driver/owner. Further, the appellant-insurance company was directed to satisfy the award, with liberty to recover the same from the respondent-driver/owner.

2. The appellant has assailed the award on the following grounds:

i) That the learned Tribunal has not taken into consideration that the contributory negligence of the claimant-respondent No. 1 cannot be overruled.

ii) That the claimant-respondent No. 1, even if presumed to be a driver, has suffered permanent disability only to the extent of 75% of his right leg and the said disablement when compared with the whole body certainly would certainly stand reduced to some extent say up to 25%. However, the learned Tribunal has erroneously awarded compensation by treating the claimant-respondent No. 1 as having suffered 100% functional disability, which is contrary to the medical evidence on record.

iii) That the alleged accident took place in 2018, as such, the wages payable to a skilled worker, as prescribed under SRO 460 of 2017 dated 26.10.2017 were applicable, which fixed the monthly wage at Rs. 10,500/- per month but the learned Tribunal has arbitrarily determined monthly income of respondent No. 1 as Rs, 15,000/- per month.

iv) That the claimant had not proved anything so far as the future medical expenses is concerned nor has the hospital prescribed so, still the Tribunal without any basis has awarded Rs. 1.00 lac as compensation under the head of future medical expenses in favour of respondent No. 1.

v) That the learned Tribunal ought to have granted less compensation under the heads of pain and suffering and loss of amenities of life.

3. Learned counsel for the appellant-Insurance Company reiterated the submissions made in the memo of appeal. He vehemently contended that there was no evidence on record to substantiate the claim for future medical expenses and, therefore, the learned Tribunal was not justified in awarding compensation of Rs. 1,00,000/- under the head of future medical expenses.

4. Mr. Arjun Mengi, learned counsel appearing for respondent No. 1, submitted that the learned Tribunal has rightly assessed and awarded the compensation in accordance with the law laid down by the Hon'ble Supreme Court. He, therefore, contended that the present appeal is devoid of merit and deserves to be dismissed.

5. Heard learned counsel for the parties and perused the record.

6. The record depicts that respondent No. 1 filed a claim petition before the learned Tribunal under Sections 140 and 166 of the Motor Vehicles Act for grant of compensation on account of injuries suffered by him in a road traffic accident, that took place at Gugava Pul, Gatampur Janpad Kanpur Nagar (Uttar Pradesh) on 16.09.2018 at about 1.00 PM. The respondent No. 1 claimed to have suffered various injuries all over the body due to accident and more particularly, amputation of his right leg. It was stated by the respondent No. 1 that he was getting salary of Rs. 25,000/- per month by profession as driver and in addition to that, he was getting Rs. 500/- per trip and in a month, he would get addition sum of Rs. 5,000/- for trips. He further claimed that he was earning Rs. 10,000/- per month from agricultural pursuits. On the basis of these assertions, respondent No. 1 claimed that his total monthly income was Rs. 40,000/-.

7. Appellant and respondent Nos. 2 and 3 were put to notice but respondent Nos. 2 and 3 did not cause appearance, as such, they were set *ex parte*. Appellant-insurance Company filed the response before the Tribunal, thereby objecting the claim of the respondent No. 1. On the basis of the pleadings of the parties, following issues were framed:

> i) Whether the petitioner was driving the vehicle (Truck) bearing No. HR 68B-0354 and met with an accident at Gugava Pul, Gatampur Janpad Kanpur Nagar (Utter Pradesh) due to rash and negligent driving by the respondent No. 3 who was plying the offending vehicle bearing registration No. MH43Y-9530, collided his vehicle, as a result of which petitioner received grievous injury on head, chest and other parts of body and also lost his right leg, leading to his permanent disablement?------- OPP
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> ii) In case issue No. 1 is proved in affirmative, whether the petitioner is entitled to receive the compensation, if yes, to what amount and from whom? .....OPP
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> iii) Whether the offending vehicle was being driven at the time of accident in contravention of terms and conditions of the insurance policy and the driver was not holding a valid and effective driving license, route permit and fitness certificate at the time of accident, as such, the respondent insurance company is not liable to pay compensation to the petitioner?- -- OPR-1
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> iv) Relief?"

8. In support of his claim, respondent No. 1 examined himself as well as PWs Javed Ahmed, Imtiyaz Ahmed, Manzoor Ahmed, and Dr. Rafi**.** On the other hand, the appellant–Insurance Company examined RW Aman Ghai, Assistant Manager, New India Insurance Company Ltd., in support of its defence.

9. Learned Tribunal in terms of award dated 10.08.2024 granted compensation of Rs. 52,79,945/- in favour of respondent No. 1 along with interest @7.5% from the date of institution of the claim petition till its realization.

10. The first contention raised by the appellant-Insurance Company is that the learned Tribunal has not considered that in the instant case, the contributory negligence of the claimant cannot be overruled.

11. The claimant/respondent No. 1 besides examining himself, also examined PWs Javed Ahmed, Imtiyaz Ahmed, Manzoor Ahmed and Doctor Rafi in support of his claim. Respondent No.1 and his witness namely Jawed Ahmed have categorically stated that the accident took place due to rash and negligence driving of the driver of the vehicle bearing registration No. MH43Y 9530. The appellant-Insurance Company did not examine any witness to rebut the evidence led by respondent No. 1, as such, it cannot be said that there was contributory negligence on the part of respondent No. 1. Strangely, the appellant-Insurance Company has not taken the plea that there was contributory negligence on the part of respondent No. 1 but has taken a plea that contributory negligence of respondent No. 1 cannot be ruled out. Accordingly, there is no force in this contention of the appellant, as such, the same is rejected.

12. Secondly, it was contended by the appellant that the learned Tribunal has considered the disablement of respondent No. 1 as 100%, whereas he had suffered 75% disablement of his right leg and when compared with the same, the same would be reduced. The respondent No. 1 by way of his statement as well as statement of PWs Javed Ahmed and Manzoor Ahmed have categorically proved that the respondent No. 1 was working as a driver. Dr. Rafi, in his statement, has stated that he has lost his right leg in the accident. He has further stated that the diagnosis of respondent No. 1 was above knee amputation lower limb and his permanent disability was

75% of the involved limb on the right side of the body. The disability certificate issued by the board of Doctors bears his signatures. He proved the disability certificate, which was exhibited as EXPW-P2. During his cross-examination, he admitted that the injured was a driver by profession and, owing to the injuries sustained by him, he was no longer capable of driving any vehicle. He further deposed that, in view of the nature of the claimant's occupation, his functional disability was 100%**.**

13. In Hon'ble the Supreme Court of India, in **"Sarnam Singh vs. Shriram General Insurance Co. ltd. and ors". 2023 LiveLaw (SC) 498**, has observed as under:

> "9.As to how compensation, in case where permanent disability of an injured affects his functional disability, is to be assessed has been considered by this Court, repeatedly. Reference can be made to the judgment of this Court in Mohan Soni vs. Ram Avtar Tomar And Others. In the aforesaid case the injured was working as a cart puller. As a result of the accident, his left leg was amputated. His permanent disability was assessed at 60%. **The Tribunal assessed the compensation taking the loss of earning at 50% on the theory that he can still do some other work while sitting. The High Court did not disturb the finding regarding loss of income on account of disability. This Court found that the Tribunal was in error in taking the loss of earning at 50% as the injured was 55 years of age and it may be difficult for him to find a job at that stage. In fact, any physical disability resulting from an accident has to be judged with reference to the nature of the work being performed by the person who suffered disability. The same injury suffered by two different persons may affect them in different ways. Loss of leg by a farmer or a rickshaw puller may be end of the road as far as his earning capacity is concerned. Whereas, in case of the persons engaged in some kind of desk work in office, loss of leg may have lesser effect. This Court enhanced the loss of earning capacity from 50% to 90%.**
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> 10. Applying the same principle to the case in hand, **we find that the appellant herein was working as a gunman with Bharat Hotel Limited. On account of amputation of his right leg above the knee, he was terminated from service w.e.f. 31.05.2015. It is not a matter of dispute that a person with his right leg amputated cannot perform the duty of a gunman. This is his functional disability. He was 50 years & 5 months old at the time of accident. Considering the aforesaid facts, in our view, the Tribunal was right in assessing the loss of earning capacity**

of the appellant at 100% and assessing the compensation accordingly. The High Court was in error in reducing the loss of earning capacity to 80%, relying upon the judgment of High Court, despite there being a judgment of this Court available on the issue."

Emphasis added.

14. In "**R. Halle vs. Reliance General Insurance Company ltd.", 2026 Live Law (SC) 261**, the Hon'ble Supreme Court held as under:

"21. **However, the High Court, while observing that physical disability cannot be mechanically equated with functional disability, reduced the functional disability suffered by the appellant-claimant from 63% to 30% without adverting in detail to the medical evidence on record, particularly the findings of the Medical Board and the neuropsychological report evidencing cognitive deficits suffered by the appellant-claimant as a consequence of the injuries suffered in the accident. No independent contra material was placed on record by the respondent- insurer to displace the evidentiary value of the disability certificate. In our considered view, such reduction of the functional disability, in the absence of convincing evidence impeaching the credibility of the medical certificates placed on record by the appellant-claimant and without assigning cogent reasons, was not at all justified.** For ready reference, the relevant extract from the impugned judgment is reproduced herein below: -

"10. According to the claimant he was earning a sum of Rs.29,108/- per month by working as a Manager in a private concern, which has been proved through Exs.21 to 25. Thus, the Tribunal has arrived the amount under the head of loss of earning power, by multiplying the disability as 63%. It appears to be on the higher side. **Though the Medical Board has assessed the physical disability of the claimant as 63%, after going through the records, we have come to the conclusion that the functional disability suffered by the claimant would be 30%.** After adding 40% towards future prospectus, the total income of the claimant is arrived at Rs.40,751/-, rounded off to Rs.40,000/-. Thereby, the claimant is entitled for an amount of Rs.24,48,000/- (Rs.40,000/- x 12 x 30% x 17); Rs.1,00,000/- for Loss of amenities; Rs.2,00,000/- under Pain and sufferings; since the claimant was unmarried at the time of accident and sustained grievous injuries in the accident, an amount of Rs.2,00,000/- is granted towards loss of marital prospectus; The amounts awarded under the heads of Medical expenses, Transportation to hospital, Extra nourishment and Damage to clothing and articles are confirmed."

22. A careful reading of the aforesaid extract indicates that the High Court merely adverted to the general principles governing assessment of disability and, without undertaking any independent analysis of the evidence on record, abruptly concluded that the functional disability suffered by the appellant- claimant would be 30%. There is no discussion as to why the medical findings, the disability certificate issued by the competent Medical Board, or the neuropsychological report were doubtful or insufficient to sustain the conclusion reached by the MACT. Equally, while reducing the quantum of compensation, no specific or cogent reasons have been assigned for curtailing the amounts awarded under the heads of "Loss of Amenities" and "Pain and Suffering," which were based on the nature and gravity of the injuries sustained by the appellant-claimant. In our considered opinion, such conclusions, abruptly arrived at without proper re-appreciation of the evidence and without recording adequate reasons, are in the nature of presumptions and assumptions and cannot be sustained in the eyes of law.

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25. **In order to determine the functional disability suffered by the appellant-claimant, it is necessary to advert to the findings recorded by the Medical Board with respect to the permanent physical disability, as well as the neuropsychological assessment report placed on record. Both these documents remained uncontroverted and hence, they provide credible expert evidence so as to assess the extent and nature of disability. The true nature and extent of the injuries, and their impact on the cognitive and functional abilities of the appellant-claimant, can be properly appreciated only upon a careful consideration of these materials**. For ready reference, the relevant extracts from the said documents are reproduced herein below: -

"Neuropsychological Assessment Report: Interpretation & Conclusion
• Memory Scale shows that his verbal and Visual memory is impaired severely.
•On tests for frontal lobe functioning-impairment.
• On the test for parietal lobe functioning, normal performance shows that the lobe function is intact.
The IQ range of 65,fall into the category of Mild Intellectual Disability. Report of the Medical Board.
Case of Head injury treated conservatively, facial injury x left femur fracture treated by surgical intervention. **Above injury has resulted in partial blindness, cognitive impairment and partial lom of Rom and stability of left knee.**
His disability due to above injuries sixty three percent (63%)."

[Emphasis supplied]

26. Having bestowed our anxious consideration to the material placed on record, we find that the disability certificate issued by the Medical Board clearly records that the appellant-claimant had suffered a head injury treated conservatively, facial injury, and left femur fracture treated by surgical intervention. These injuries progressively resulted in partial blindness, cognitive impairment and partial loss of range of motion and stability of the left knee. The neuropsychological assessment further evidences severe impairment in verbal and visual memory, impairment of frontal lobe functions and an IQ score of 65, placing the appellant-claimant in the category of Mild Intellectual Disability. These findings, read conjointly, demonstrate that the injuries suffered by the appellant-claimant were not merely orthopedic in nature, but had significant neurological sequelae directly impacting his functional and cognitive abilities.

27. This Court, in Raj Kumar v. Ajay Kumar, has authoritatively laid down the principles governing assessment of permanent and functional disability for the purpose of awarding compensation. **It has been held that the percentage of permanent disability assessed by a medical expert cannot be mechanically equated with the percentage of loss of earning capacity. What is required to be determined is the actual impact of such disability on the earning capacity of the injured, having regard to his avocation, age and the nature of work performed. The Tribunal is required to undertake a structured analysis to ascertain the activities the claimant can or cannot perform post-injury, the nature of his profession prior to the accident, and whether the disability has resulted in total incapacity or merely restricted or reduced earning capacity.** For ready reference, the relevant extracts from the said judgment are reproduced hereinbelow: -

"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 thereof 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 earning 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.
> 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 (i) 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."

> 28. In view of the principles laid down by this Court in Raj Kumar (supra), as consistently affirmed thereafter, **the assessment of functional disability must be grounded in a realistic appraisal of the impact of the injury on the claimant's capacity to earn.** The inquiry is not confined to the numerical percentage of physical impairment certified by the Medical Board, but extends to evaluating whether the claimant, in light of his educational background, skill set and nature of employment, is capable of meaningfully pursue his avocation."

15. Further, in **"M Paramesh vs. VRL Logistics ltd. and another**, 2026 INSC 655, the Hon'ble Supreme Court has held as under:

> "By virtue of the aforesaid amputation, the appellant has effectively lost his capacity to continue the work of a mason, which was admittedly the sole avocation being pursued by him for earning his livelihood. It is not even the case of the respondents that the appellant was engaged in any other sedentary occupation or that despite the amputation suffered by him, his earning capacity remained unaffected.

16. The ratio laid down in the aforesaid judgments is that the assessment of functional disability must be determined on the basis of the impact of the injuries on the claimant's earning capacity and is not confined to the numerical percentage of permanent physical disability certified by the Medical Board. Applying the ratio laid down in the aforesaid judgments to the facts of the present case, this Court finds no infirmity in the compensation awarded by the learned Tribunal towards loss of earning capacity. In view of the above, this Court does not find any force in this contention of the appellant, as such, the same is also rejected.

17. Thirdly, it was contended that the monthly income of respondent No. 1 was required to be determined in terms of SRO 460 of 2017 dated 26.10.2017 as Rs. 10,500/- per month. A perusal of the statement of Pervaiz Ahmed Bhat, respondent No. 1 reveals that he was earning Rs. 40,000/- per month, but the learned Tribunal has not considered his income as Rs. 40,000/- per month. Learned Tribunal has considered the income of respondent No. 1 as 15,000/- per month. In his statement, respondent No.1 has stated that he was the only bread earner of the family and has four children, i.e. two sons and two daughters and all were minors. As respondent No. 1 was maintaining his family including four minor children also, so the learned Tribunal has rightly considered Rs. 15,000/- as the monthly income of the respondent No. 1. The statement of respondent No. 1 with regard to his

income has been corroborated by PW Manzoor Ahmed. The monthly income of the respondent No. 1 determined at the rate of Rs. 15,000/- per month is neither exorbitant nor excessive in the facts and circumstances of the case. As such, there is no force in this contention too, the same is rejected.

18. Fourthly, it was contended that there was no evidence with regard to future medical expenses, therefore, Rs. 1.00 lac could not have been awarded under the head of future medical expenses. It needs to be noted that the learned Tribunal has awarded Rs. 5,00,000/- under the head of artificial limb and as such, this Court finds substance in the submissions made by the learned counsel for the appellant that there was no evidence with regard to the future medical expenses, particularly when Rs. 5,00,000/- have been awarded to the respondent No. 1 for the artificial limb. Accordingly, this Court is of the considered view that the compensation of Rs. 1.00 lac granted under the head of future medical expenses could not have been granted by the learned Tribunal, but at the same time, it is found that the compensation under this head was not considered while calculating the compensation.

19. Lastly, the contention of the appellant is that the learned Tribunal has awarded excessive compensation on account of damages for pain and suffering and loss of amenities of life. So far as application of multiplier of 17 and enhancement of income by 40% on account of future prospects are concerned, this court does not find any infirmity in the same.

20. The record depicts that Rs. 1,00,000/- each was awarded under both the heads of “Loss of Amenities” and “Pain and Sufferings” and the same is

neither exorbitant nor excessive warranting interference of this Court. However, this court finds that the learned Tribunal has committed mistake while calculating the total compensation. At page-23 of the award, learned Tribunal has granted Rs. 95,945 as medical expenses, Rs. 50,000/ each as "Attendant Charges", "Transport Charges" and "Special Diet Charges" and Rs. 1.00 lac as future medical expenses, which aggregates to an amount of Rs. 3,45,945/. However, while calculating the compensation at page No. 25 of the award, the Tribunal has granted Rs. 2,95,945/ besides compensation of Rs. 1.00 lac each under the heads of "Pain &Sufferings" and "Loss of Amenities of life" in addition to Rs. 5.00 lacs for purchase and maintenance of Artificial Limb and has not awarded the compensation under the head of Future Medical Expenses.

21. In view of the above, the instant appeal is partly allowed to the extent of setting aside the compensation granted under the head of future medical expenses and reducing the compensation by 50,000/ calculated wrongly by the learned Tribunal.

22. Accordingly, the award is modified to the following extent:

i)	Loss of future earnings-	Rs. 42,84,000/-
ii)	Expenses relating to medical, expenses, attendant charges transportation, diet charges,	Rs.2,45,945/-
iii)	Artificial limb	Rs. 5,00,000/-
iv)	Compensation on account of pain and suffering and trauma	Rs. 1,00,000/-
v)	Loss of amenities of life and expectation of life	Rs. 1,00,000/-
	Total	**Rs. 52,29,945/-**

23. Other terms and conditions of the award, including direction regarding payment of interest, shall remain the same. The excess amount of compensation, if deposited with the Registry of this Court, be released in favour of the appellant. The balance amount along with interest be released in favour of respondent No. 1 after due identification by the learned counsel representing him, after the payment of Court fee in terms of award dated 10.08.2024.

(RAJNESH OSWAL)
JUDGE

Jammu
07.08.2026
Rakesh PS

Whether the order is speaking: Yes/No
Whether the order is reportable: Yes/No

HIGH COURT OF JAMMU & KASHMIR AND LADAKH