

GAHC010065932021



2026:GAU-AS:3405

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

Case No. : MACApp./119/2021

M/S LIBERTY GENERAL INSURANCE LTD.
HAVING ITS REGISTERED OFFICE AND HEAD OFFICE AT 10TH FLOOR,
TOWER A, PENINSULA BUSINESS PARK, GANPATRAO KADAM PARK,
LOWER PAREL, DELISLE ROAD, MUMBAI, MAHARASTRA- 400013 AND A
BRANCH OFFICE AT 1ST FLOOR, GANPATI ENCLAVE, BORA SERVICE, G.S.
ROAD, 781007, GUWAHATI, ASSAM.

VERSUS

DIPAK BAISHYA AND 2 ORS.
S/O- LATE SANTI BAISHYA, R/O- VIL.- GANDHMOW, P.O. GANDHMOW
B.O., P.S. SUALKUCHI, DIST.- KAMRUP, ASSAM, PIN- 781103.

2:PINKU MALAKAR
S/O- LATE SIDAM MALAKAR
R/O- VILL.- KISMAT BONGSHOR
P.O. BONGSHOR B.O.
P.S. SUALKUCHI
DIST.- KAMRUP
ASSAM
PIN- 781103. (OWNER OF THE VEHICLE NO. AS-25-H-1854 (HONDA DIO).

3:MD. MUSTAFA ALI
S/O- AFTAR ALI
R/O- VILL.- AGGYATHURI
P.O. CHANGSARI S.O.
P.S. HAJO
DIST.- KAMRUP
ASSAM
PIN- 781101. (DRIVER OF THE VEHICLE NO. AS-25-H-1854 (HONDA DIO)

**BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA**

For the Appellant : Mr. R. Goswami, Advocate

For the respondents : Ms. D. D. Roy, Advocate
(For respondent No. 1)

Date of Hearing : **24.02.2026**

Date of Judgment : **09.03.2026**

JUDGMENT & ORDER

1. Heard Mr. R. Goswami, learned counsel for the appellant. Also heard Ms. D. D. Roy, learned counsel appearing for respondent No. 1.

2. This appeal under Section 173 of the Motor Vehicles Act, 1988, has been preferred by the appellant, namely, *M/s Liberty General Insurance Limited*, impugning the judgment and award dated 07.01.2021, passed by the Motor Accident Claims Tribunal No. 3, Kamrup(M), Guwahati in MAC Case No. 652/2017 whereby an amount of Rs.9,92,300/- along with interest at the rate of 7.5 % per annum from the date of filing of the claim petition was awarded as compensation to the respondent No. 1 and the present appellant was directed to pay the same.

3. The relevant fact for consideration of the instant appeal, in brief, are that the claimant (respondent No. 1) had approached the Motor Accident Claims Tribunal No. 3, Kamrup(M), Guwahati by filing an application under Section 166 of the Motor Vehicle Act, 1988, seeking compensation for the injuries sustained by him as a result of motor vehicular accident which occurred on 24.11.2016. It is stated by the claimant in his application before the Motor Accident Claims

Tribunal that on the aforesaid day, while he was coming from Bongshor towards his house at Gandhmou by walking, he was hit by a motorcycle bearing Registration No. AS-25-H-1854 (Honda Dio) causing serious injuries on his person. Immediately after the accident, the claimant was taken to Guwahati Medical College and Hospital where he was admitted and later on discharged on 03.01.2017.

4. The claimant/respondent No. 1 sustained head injuries as well as Type-II compound fracture of both bone in the right leg, Type-I compound fracture of femur, fracture shaft of humerus right. The present appellant as opposite party No. 3 in the claims case contested the claim by filing written statement and denied its liability to pay any compensation to the claimant/respondent No. 1.

5. Upon pleadings of both the parties, the Motor Accident Claims Tribunal framed following issues:-

“(I) Whether the claimant Dipak Baishya sustained injuries in the alleged road accident dated 24.11.2016 at about 07.30 pm at Niz-Gandhmow involving the vehicle bearing registration No. AS-25-H-1854 (Honda) and whether the said accident took place due to rash and negligent driving of the driver of the offending vehicle?”

“(II) Whether the claimant is entitled to receive any compensation and, if yes, to what extent and by whom amongst the opposite parties, the said compensation amount will be payable?”

6. During the course of inquiry, the claimant examined himself as PW-1 and exhibited certain documents. He also examined Dr. Sujata Hazarika as PW-2, whereas the Insurance Company/appellant adduced no evidence.

7. Ultimately, by the judgment and award which has been impugned in the instant appeal, the Motor Accident Claims Tribunal allowed the claim petition and directed the appellant to pay compensation to the claimant in the manner as already described in the foregoing paragraphs.

8. Mr. R. Goswami, the learned counsel for the appellant has submitted that though several grounds have been stated in the memo of appeal. However, the appellant is mainly pressing on the ground that the Motor Accident Claims Tribunal No.3, while passing the impugned judgment, had erred in considering the functional disability of the claimant to the extent of 63% as a whole.

9. He further submits that the tribunal has also erred in assessing the loss of the earning capacity of the claimant to the extent of 63% ignoring the testimony of PW-2. He submits that the deposition of PW-2 as well as the disability certificate which has been exhibited as Exhibit-5 clearly indicates that the claimant suffered physical impairment in relation to his right lower limb only and the disability which has been assessed by the doctor i.e., 63%, was in relation to right limb only and not of the whole body.

10. The learned counsel for the appellant submits that the tribunal has erred in not following the guidelines issued by the Apex Court in this regard in the case of "***Raj Kumar Vs. Ajay Kumar and another***" reported in "***(2011) 1 SCC 343***". He submits that the percentage of disability indicated in the Exhibit-5 as well as in the testimony of the PW-2 cannot be regarded as the percentage of loss of earning capacity as the loss of earning capacity has to be assessed separately on the basis of factors like nature of profession, age, education and similar other factors.

11. He further submits that in the instant case, the PW-2 i.e., the doctor, who

examined the claimant has categorically deposed that the percentage of disability indicated by her in her testimony is in relation to the right lower limb of the claimant and not to the whole body. He submits that under such circumstances, it was incumbent upon the tribunal to seek clarification as to whether such percentage of disability is functional disability with reference to whole body or whether it is with reference to a limb only. He, therefore, submits that the tribunal was wrong in assessing the loss of future earning capacity of the claimant to the extent of 63% and thereby giving an additional compensation against that component to the extent of Rs.7,93,800/-. He submits that since the tribunal while assessing the extent of permanent disability suffered by the claimant has not complied with the guidelines of the Apex Court, this matter may be remanded back to the tribunal with a direction to comply with the directions of the Apex Court as indicated in the aforesaid judgment and thereafter pass a fresh award. The learned counsel for the appellant has also cited a ruling of the Apex Court in the case of "**Arvind Kumar Mishra Vs. New India Assurance Company Limited and another**" reported in "**(2010) 10 SCC 254**".

12. On the other hand, Ms. D.D. Roy, the learned counsel for the respondent/claimant has submitted that the Motor Accident Claims Tribunal has committed no illegality or irregularity in assessing the functional disability of the claimant to the extent of 63%. She submits that the since the claimant suffered Type-II compound fracture of both bone in the right leg, Type-I compound fracture of femur, fracture shaft of humerus right followed by disability, he was totally disabled from on his right side and she submits that the tribunal while assessing the loss of functional disability to the tune of 63% has in fact assessed the functional disability on the lower side. She submits that the

claimant was a vegetable vendor by profession and after the accident he was unable to stand on his own legs and also there is a difficulty in movement.

13. She also submits that the functional disability ought to have been computed more than 63%. However, since no cross appeal has been filed by her, she is not pressing on the said issue. In support of her submission, the learned counsel for the respondent has cited following rulings: -

(i) "*Jagdish Vs. Mohan and others*" reported in "**2018 (2) T.A.C 14 (SC)**"

(ii) "*Sanjay Verma Vs.Haryana Roadways*" reported in "**(2014) 3 SCC 210**"

(iii) "*Gregory Vanlalfinga Vs. Smt. Lalbiakluangi and another*" reported in "**2017 (4) T.A.C. 912 (Gau.)**"

14. The learned counsel for the respondent No. 1, therefore, submits that the appeal filed by the present appellant may be dismissed.

15. I have considered the submissions made by learned counsel for both sides and I have gone through the materials available on records, including the records of MAC Case No. 652/2017 which was requisitioned from the concerned Motor Accident Claims Tribunal. I have also perused the rulings cited by the learned counsel for both sides in support of their respective submissions.

16. The short point for determination in this appeal is as to whether the Motor Accident Claims Tribunal No. 3, Kamrup(M) had erred in regarding the functional disability of the respondent No. 1 as 63% as a whole and thereafter awarding Rs.7,93,800/- against the component of total loss of earning capacity on the basis of said estimation.

17. If we peruse the evidence on record, it appears that the PW-2, Dr. Sujata

Hazarika has categorically stated that the disability of the respondent No. 1, assessed by her, is permanent in nature and is in relation to right lower limb and not to the whole body. The disability assessed by the PW-2, as also apparent from Exhibit-5, is 63% in relation to right lower limb of the respondent No. 1.

18. If we go through the ruling of the Apex Court in the case of "*Raj Kumar Vs. Ajay Kumar and another*" (supra), it becomes clear that when a doctor gives evidence about permanent disability, the tribunal has to seek clarification as to whether such percentage of disability is functional disability with reference to the whole body or whether it is only with reference to a limb. In the instant case, the PW-2 has categorically stated during her cross examination that the disability assessed by her relates to particular limb and not to the whole body of the claimant.

19. In the instant case, the Tribunal, while ascertaining the functional disability only took into consideration the Exhibit-5 as well as the fact that the Insurance Company failed to adduce any counter-evidence in that regard. However, this Court is of considered opinion that the tribunal though cannot be held to be totally wrong, fell short of giving proper reasons for arriving at the conclusion that the functional disability of the claimant as a result of the accident is 63%.

20. The percentage of permanent disability arising out of injuries, to a person, and the resultant functional disability may or may not be same. It depends upon various factors. However, both are different concepts. Whereas, the permanent physical disability relates to impairment of any organ of the body or of whole body of a person, the functional disability relates to loss of his earning capacity. Hence, in a given case, the permanent physical disability may be of 10%, say due to amputation of index finger of the right hand of a person. However, if the

loss of the index finger of the said person disables him from performing the job which he was earlier doing. For example, if the said person happens to be a neurosurgeon, who may have to use his index finger during performing surgeries, such a loss of index finger due to amputation may cause functional disability to the extent of even 100%.

21. The Apex Court in the case of "***Raj Kumar Vs. Ajay Kumar and another***" (supra) has clarified this aspect by holding that "*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 same as per percentage of permanent disability)*". The same permanent disability may result in different percentage of loss of earning capacity of different persons, depending upon the nature of profession, occupation or job, age, education and other factors.

22. Further, it is for the medical expert like doctor or board of doctors to ascertain the percentage of permanent disability of a person, on the other hand, the functional disability may be assessed by the court on the basis of materials on record.

23. In the instant case, the tribunal had only erred in treating the percentage of permanent disability of the lower right limb of the claimant to be his functional disability without giving any further justification. Otherwise, the conclusion arrived at by the tribunal regarding percentage of functional disability suffered by the claimant may even be higher in case of the present respondent No. 1. The evidence on record shows that the claimant was doing business of vegetables. The nature of job which was performed by the claimant would

obviously require standing, sitting, walking, weighing, moving vegetables from one place to others and carrying load. The Exhibit-5 clearly shows that the standing, walking, squatting, kneeling of the claimant have been affected to the extent of 63% in respect of the affected leg. Since, the nature of work which the claimant was performing would require him to move, stand, walk, carry weight etc., the disability of one of the legs would affect the above activities to a great extent even if the other leg is not affected. This Court is, therefore, of the considered opinion that the functional disability of the claimant as a result of injuries sustained by him in the accident may even be more than 63%, say 70% to 80% because he can no longer effectively perform the works necessary for doing business of vegetables. However, since no cross objection has been filed by the claimant in this appeal, this Court is not tinkering with the compensation assessed by the Motor Accident Claims Tribunal in the impugned judgment and award.

24. In view of the discussions made and reasons stated in the foregoing paragraph, this Court does not find any reason to interfere in the impugned judgment and award.

25. This appeal is accordingly dismissed.

26. Send back the records of the MAC Case No. 652/2017 to the Motor Accident Claims Tribunal No. 3, Kamrup(M), Guwahati along with a copy of this judgment.

JUDGE

Comparing Assistant