



CGHC010375832019



2026:CGHC:27925

NAFR**HIGH COURT OF CHHATTISGARH AT BILASPUR****MAC No. 2018 of 2019**

1 - Rikhman Lal S/o Jain Lal Yadav Aged About 40 Years R/o Sanjay Nagar,
Kumhari, District - Durg Chhattisgarh., District : Durg, Chhattisgarh

--- Appellant(s)**versus**

1 - Babloo S/o Shravan Goud, Permanent R/o Post Office And Police Station
- Rudrapur, District - Devariya (U. P.) At Present R/o Through - Santosh
Singh Jaswant Singh Sandhu, 161 / A, 11th Chal, Vikholi Park, Aanandgarh,
Road No. - 16, Near Pani Tanki, Vikholi Mumbai (Maharashtra) Pin Code -
400079 (Driver Of Truck No. M. H. - 04 / D.S. / 1913), District : Mumbai, Ma-
harashtra

2 - Santosh Singh Jaswant Singh Sandhu 161/a, 11th Chal, Vikholi Park,
Aanadgarh, Road No. 16, Near Pani Tanki, Vikholi Mumbai (Maharashtra) Pin
Code - 400079 (Owner Of Truck No. M. H. - 04 / D.S. / 1913), District :
Mumbai, Maharashtra

3 - Bajaj Alianj General Insurance Co. Ltd., Through - In Charge Officer, Bajaj
Alianj General Insurance Co. Ltd. Shiv Mohan Bhawan Pandri, Raipur, Dis-
trict - Raipur Chhattisgarh. (Insurer Of Truck No. M. H. - 04 / D.S. / 1913),
District : Raipur, Chhattisgarh

--- Respondent(s)

For Appellant : Mr. Rakesh Kumar Thakur, Advocate

For Respondent No. 3 : Mr. Raj Awasthi, Advocate

Hon'ble Shri Sanjay K. Agrawal, Judge
Order on Board

07.07.2026

1. This appeal has been filed by the appellants/claimants under Section 173 of the Motor Vehicles Act, 1988 (for short "Act of 1988") seeking enhancement in the compensation amount, against the impugned award dated 17.12.2018 passed by the Fifth Additional Motor Accident Claims Tribunal, Raipur, Chhattisgarh (for short "Claims Tribunal") in Claim Case No. 152/2012, whereby the Claims Tribunal allowed the claimant's application and awarded Rs. 6,48,000/- along with interest.
2. Learned counsel for the appellant submits that the Claims Tribunal has erred in awarding inadequate compensation. It is further submitted that although the Claims Tribunal assessed the appellant's permanent disability at 60% (Ex.P/9), it failed to appreciate that the appellant's right leg has been amputated, which has severely impaired his functional capacity and adversely affected his future prospects. It is contended that, considering the nature of the injury and its impact on the appellant's earning capacity and day-to-day life, the functional disability ought to have been assessed at 100%, and the compensation determined accordingly. In support of his submission learned counsel placed his reliance upon a decisions of the Hon'ble Supreme Court in the matter of ***M. Paramesh Vs. VRL Logistics Ltd., and Another***¹, ***Shankar Dutt Vs. United India Insurance Co. Ltd and Others***² and ***Gauribai Vs. Savitadev and Others***³. Learned counsel for the appellant would further submit that under the heads of loss of medical treatment, pain and suffering, transportation expenses, special diet and attendant less amount has been awarded by the Claims Tribunal which is liable to be enhanced and even under the heads of future earning capacity, loss of amenities & enjoyment compensation has not been awarded by the Claims Tribunal which is liable to be awarded.
3. Learned counsel for the appellant would further submit that the Claims Tribunal has erred in exonerating the Insurance Company from its liability on the ground of absence of a valid permit. It is submitted that the appellant is a third-party victim and, even if there was any breach of the

1 2026 SCC OnLine SC 1188

2 2026 SCC OnLine SC 1193

3 2024 ACJ 2017

policy condition regarding the permit, the Insurance Company ought to have been directed to satisfy the award in the first instance with liberty to recover the amount from the owner and driver of the offending vehicle in accordance with the settled principle of "**pay and recover.**" Therefore, the finding exonerating the Insurance Company deserves to be set aside.

4. Learned counsel for the respondent No. 3 submits that the Claims Tribunal has already taken a liberal view by assessing the appellant's permanent disability at 60%, and there is no justification for treating the functional disability as 100%. It is submitted that the appellant's functional disability, if at all, cannot exceed 80%, and therefore, the compensation awarded by the Claims Tribunal does not warrant any enhancement.
5. I have heard learned counsel for the parties, considered their rival submissions made herein above and gone through the records with utmost circumspection.
6. The Claims Tribunal has assessed the appellant's permanent disability at 60% on the basis of the disability certificate (Ex.P-9), despite recording a categorical finding that the appellant's right leg had been amputated below the knee. The Tribunal, however, failed to appreciate the distinction between physical disability and functional disability. The law is now well settled that the percentage of permanent physical disability cannot be mechanically equated with the percentage of loss of earning capacity. In the matter of *M. Paramesh (supra)*, the Hon'ble Supreme Court reiterated the principles laid down in *Raj Kumar v. Ajay Kumar*⁴ and held that although the claimant had suffered only 70% physical disability, his functional disability was required to be assessed at 100%, since the above-knee amputation rendered him incapable of continuing his avocation as a mason. The Court observed that compensation in permanent disability cases cannot be determined by mechanically applying the percentage of medical disability and that what is material is the extent to which the disability destroys the earning capacity of the in-

4 (2011) 1 SCC (Civ) 164

jured. The Court, therefore, recalculated the loss of future earning by treating the functional disability as 100% and also enhanced compensation towards future medical expenses for artificial limb and prosthesis.

7. A similar principle was reiterated by the Hon'ble Supreme Court in the matter of **Shankar Dutt (supra)**, wherein the claimant, a carpenter, had suffered amputation of his right leg. Though the medical disability was assessed at 70%, the Hon'ble Supreme Court held that the claimant had suffered 100% functional disability, observing that functional disability has to be assessed with reference to the nature of the claimant's occupation, age, socio-economic circumstances and the actual effect of the injury on his earning capacity. The Court held that where the injury renders the claimant incapable of pursuing the vocation by which he earned his livelihood, the loss of earning capacity has to be treated as complete irrespective of the percentage of medical disability.
8. Likewise, in the matter of **Gauribai (supra)**, the Hon'ble Supreme Court has been held that in cases involving amputation of a limb and consequent inability to continue the previous occupation, the assessment of compensation must be based on the claimant's functional disability and not merely on the percentage of physical disability certified by the Medical Board. The Court emphasized that where the injury effectively deprives the claimant of the capacity to earn his livelihood in the vocation in which he was engaged, the loss of earning capacity has to be treated as total.
9. In the present case, the appellant was working as a salesman in private company. The Claims Tribunal itself has recorded a finding that the appellant's right leg was amputated below the knee, resulting in permanent disability. The duties of a salesman necessarily require continuous standing, walking and mobility. The amputation of the right leg has rendered the appellant incapable of effectively performing the duties attached. Therefore, although the medical disability has been assessed at 60%, the appellant has suffered 100% functional disability so far as his earning capacity is concerned. Consequently, the loss of fu-

ture earning deserves to be computed by treating the functional disability at 100%, in consonance with the principles laid down by the Supreme Court in the aforesaid decisions.

- 10.** Furthermore, under the heads of loss of medical treatment, pain and suffering, transportation expenses, special diet and attendant amount is liable to be enhanced and also under the heads of future earning capacity, loss of amenities & enjoyment amount is liable to be awarded.
- 11.** Thus, in light of the aforesaid discussion and in light of the judgments of the Supreme Court rendered in the matters of **National Insurance Company Ltd. V. Pranay Sethi⁵**, **Sarla Verma & Ors. Vs. Delhi Transport Corporation & Ors⁶** and **Magma General Insurance Co. Ltd. v. Nanu Ram @ Chuhru Ram & Ors.⁷**, this Court is computing the compensation as below:-

Sr. No	Heads	Compensation awarded by the Tribunal	Compensation awarded by this Court
1.	Income	6000x12=72,000/-	7000x12= 84,000/-
2.	Future Prospect	NIL	(+)40% 33600; Total 1,17,600/-
3.	Multiplier	72000x15=10,80,000/-	(x) 15 ; 117600x15 = 17,64,000/-
4.	Functional Disability (loss of Future earning)	60% =6,48,000/-	100% = 17,64,000/-
6.	Pain and suffering	NIL	+50,000 = 1814000
7.	Transportation, Special Diet, Attendant	NIL	+100,000 = 19,14,000/-
8.	Medical Expenses	NIL	+100,000/- = 20,14,000
9.	For other non-pecuniary loss	NIL	+50,000 =20,64,000/-
10.	Cost of Artificial Limb & Maintenance	NIL	+100,000/- = 21,64,000/-
	Total	6,48,000/-	21,64,000/-

⁵(2017) 16 SCC 680

⁶ (2009) 6 SCC 121

⁷(2018) 18 SCC 130

12. In view of the aforesaid analysis, the amount of compensation of Rs. **6,48,000/-** awarded by the Claims Tribunal is enhanced to Rs. **21,64,000/-**. Hence, after deducting the amount of Rs. **6,48,000/-**, the appellant is held to be entitled to an additional amount of Rs. **15,16,000/-**.
13. So far as the liability of the Insurance Company is concerned, the Claims Tribunal exonerated the respondent No. 3 Insurance Company on the ground that the offending vehicle did not possess a valid permit. However, the appellant is an innocent third-party victim and cannot be deprived of just compensation on account of the breach of the policy condition committed by the owner of the vehicle. The Hon'ble Supreme Court in *Amrit Paul Singh v. Tata AIG General Insurance Co. Ltd*⁸ has held that in cases where there is a breach of the permit condition, the principle of "**pay and recover**" would apply. Accordingly, respondent No.3/Insurance Company is directed to satisfy the award in the first instance and shall thereafter be at liberty to recover the amount from respondent Nos.1 and 2, the owner and driver of the offending vehicle, in accordance with law.
14. The concerned respondent No. 3 is directed to deposit the amount of compensation as enhanced by this Court within a period of three months from the date of receipt of copy of this order. The additional amount of compensation shall carry interest @6% per annum from the date of filing of claim application before the Tribunal till its realization. Rest of the conditions of the impugned award shall remain intact.
15. Accordingly, this appeal is allowed in part and the impugned award is modified to the extent as indicated herein-above.

Sd/-
(Sanjay K. Agrawal)
Judge