

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

FIRST APPEAL NO. 2211 OF 2006

Martand Sakharam Gholap

...Appellant

Vs.

1. Bharu Khan

2. United India Insurance Company Limited

...Respondents

Mr. T. J. Mendon	Advocate for the Appellant
Mrs. Varsha Chavan	Advocate for the Respondent No. 2

CORAM : S. M. MODAK, J.

DATE : 22nd SEPTEMBER 2026

JUDGMENT :-

1. The issue involved in this appeal is “*whether the Tribunal has rightly applied the principles of ascertaining the compensation in case of injury claim and whether the percentage of disability, the percentage of functional disability, the income and the amount of compensation was rightly arrived at by the Tribunal*”.

2. According to learned Advocate Shri Mendon for the Appellant, the Tribunal has not applied the settled principles properly and concluded about less amount of compensation and that is why, the present appeal is preferred.

3. Whereas according to learned Advocate Ms. Chavan, the amount quantified is proper and it does not require interference. There is no dispute about the accident and involvement of two vehicles. The Tribunal has given a finding about negligence of the offending vehicle. These findings are not challenged by the Insurance Company, as there is no appeal. There is no reason for this Court to check the correctness of those findings. So the issue is limited to the quantum of compensation.

4. On this background, I have heard learned Advocate Shri Mendon for the Appellant and learned Advocate Ms. Chavan for the Respondent No. 2-insurer.

5. Respondent No. 1 is insured and he is not contesting the appeal. It will be material to consider the quantum of compensation granted by the Tribunal. It is as follows:

Sr.No.	Particulars	Amount
1.	60% disability	Rs. 65,000/-
2.	Conveyance	Rs. 10,000/-
3.	Pain and suffering	Rs.50,000/-
4.	Nourishing Diet	Rs. 25,000/-
5.	Future Surgery	Rs.15,000/-
6.	Future inconvenience	Rs. 30,000/-
7.	Hospital and medical expenses	15,795/-
	TOTAL (rounded)	2,11,000/-

6. According to Mr. Mendon, this is too inadequate. According to him, the compensation ought to have been awarded by the Tribunal is as follows :

No.	Particulars	Tribunal	High Court
1.	Loss of Income for 13 months (8122X13)	---	Rs. 1,05,586/-
2	Hospital and Medical Expenses	Rs. 15,795/-	Rs. 1,39,031/-
3.	Pain and Suffering	Rs. 50,000/-	Rs. 1,00,000/-
4.	Attendance Charges	Nil	Rs. 50,000/-
5.	Ambulance Charges	Rs. 10,000/-	Rs. 10,000/-
6.	Loss of Expectation of Life	Nil	Rs. 1,00,000/-
7.	Loss of Comfort and Amenities	Nil	Rs. 1,00,000/-
8.	Conveyance Charges	Nil	Rs. 50,000/-
9.	Special diet	Rs. 25,000/-	Rs. 25,000/-
10.	Future Medical Expenses	Nil	Rs. 1,00,000/-
11.	Disability		Rs. 8,86,922/-

	(8122X15X14X65%) Future Prospect 30%		Rs. 2,66,077/-
12.	Future Surgery	Rs. 15,000/-	Rs. 15,000/-
13.	Less Tribunal Granted		Rs. 19,47,616/- Rs. 02,11,000/-
14.	Enhancement amount		Rs. 17,36,616/-

7. Ms. Chavan relied upon the following judgments:-

a) *Rajkumar Vs. Ajay Kumar*¹.

b) On the point of law of precedent, she relied upon the observations in case of *Municipal Corporation of Delhi Vs.*

*Gurnam Kaur*²

8. Whereas learned advocate Mr. Mendon relied upon the following judgments:-

1) Mohit Garg v/s. Hari Ram (deceased) through
LRs and others.³

2) Kersasp Ardeshir Mehta v/s. Union of India⁴

3) Kirti and others v/s. Oriental Insurance Co.
Ltd.⁵

4) Mr. R.D. Hattangadi v/s. M/s. Pest Control

1 ACJ 2011 (1)

2 AIR 1989 SCC 38

3 2026 ACJ 361

4 1986 ACJ 1002

5 2021 ACJ 1

(India) Pvt. Ltd. And others.⁶

5) P. Sathasivam and M.Y. Eqbal⁷

9. In case of injury claim, there are certain factors which are required to be considered. They are as follows:-

- a) The percentage of disability whether its partial or permanent.
- b) The part of the body which is suffering from disability, and use of that part of the body *viz-a-viz* the occupation of the claimant.
- c) The percentage of disability of that part of the body, as against the percentage of the disability in respect of overall body.

FACTS

10. Certain facts are required to be considered. There were two claims filed before the Tribunal. One is by present Appellant-Martand who was driving the motorcycle. Whereas one Subhash Shinde was the pillion rider and he has filed a separate claim for claiming disability compensation. Both were travelling on Pune Nashik Road on 25.05.2002. They were proceeding from Pune to Manchar at about 3.30 p.m., when they came near village Manchar, a truck MP-09/KA-0011 belonging to the opponent No. 1 and insured with opponent No.

⁶ AIR 1995 SC 755

⁷ 2013 AAC 2415

2 came from opposite direction at high and excessive speed and dashed the motorcycle. As a result, the Appellant and the pillion rider were injured. The injuries sustained to the Appellant are as follows:-

- a) there was compound fracture right shaft femur.
- b) Right tibia and dislocation of great toe.
- c) amputation of right arm below elbow and other injuries.

11. Initially, the Appellant was treated at Siddhakala hospital and then shifted to Sasoon hospital Pune. He was hospitalized from 25.05.2002 till 24.06.2002. He has also attended OPD for long period. The insured has not contested the proceedings. It was contested by the insurance Company only. All the averments in the Claim petition were denied including the income and quantum of compensation. During evidence, Martand entered into witness box. So also examined Dr. Diggikar on the point of disability certificate. The insurer has not given any evidence. As said above, the Tribunal has concluded about the negligence of the Driver of the offending truck. The details of the service of Appellant which has come in evidence are as follows:-

- a) At the time of accident, the Appellant was working with

Post and Telegram Department as Clerk. His age was 45 years. He was drawing salary of Rs. 8,122/- per month.

b) He was hospitalized in Sancheti hospital from 25.05.2002 till 26.6.2002 and from 14.08.2002 till 16.08.2002, **for the purpose of removal of right external fixator.**

c) There is certificate issued by the department of Post dated 25.11.2005 mentioned in the leave enjoyed by the Appellant from 25.05.2002 till 16.07.2003 at Exh. 27.

d) There is certificate dated 12.12.2005 issued by the Senior Post Master, Pune City, at Exh. 28 certifying that an amount of Rs. 12,24,236/- was the Medical claim and out of that an amount of Rs. 1,13,127/- was sanctioned on 28.10.2002.

e) After the accident, he resumed his duties on 17.07.2003. He also resigned from the job. However, admittedly, no document to show his resignation was placed on record.

JUDGMENTS

12. It will be material to consider the observations in judgments

cited by both the sides.

13. In case of *Municipal Corporation of Delhi* (supra), the Supreme Court has laid down certain principles about the law of precedent.

They are as follows:

- a) When there is order made by consent of the parties, the Court does not adjudicate upon the rights of the parties nor lay down any principle.
- b) Quotability as 'law' applies to the principle of a case, its ratio decidendi. The only thing in a Judge's decision binding as an authority upon subsequent Judge is the principle upon which the case was decided. Statements which are not part of a ratio decidendi are distinguished as obiter dicta and are not authoritative.
- c) The task of finding the principle is fraught with difficulty because without an investigation into the facts, it is not possible.
- d) Pronouncement of law, which are not part of ratio decidendi are classed as obiter dicta and are not authoritative.

14. According to Ms. Chavan, these principles are required to be considered because according to her, Mr. Mendon has cited so many judgments, but they are not the authoritative pronouncement, but they are on the basis of the facts of that case. According to her, the law which is laid down in case of *Rajkumar (supra)* is perfectly applicable and this Court is required to appreciate the evidence on the basis of principles laid down in that judgment, how to appreciate the evidence in case of injury claim.

15. Whereas according to Mr. Mendon, after the decision in *Rajkumar* in the year 2011, there are so many orders which are passed by the Supreme Court consisting of three Judges and they are required to be considered.

16. In *Rajkumar (supra)*, the Supreme Court laid down the heads under which compensation can be claimed. Broadly, it is pecuniary and non- pecuniary damages. So certain heads of damages are towards actual amount spent. Whereas certain heads are towards items which cannot be ascertained. Generally, Tribunals do not find difficulty in quantifying pecuniary damages. One of them is loss of future earnings. For deciding this amount, Tribunal has to consider the percentage of

physical disability and percentage of functional disability. Depending upon this disability, the quantum of loss of future earning has to be ascertained.

17. In *Raj Kumar (supra)*, the Supreme Court observed the Tribunal should not consider percentage of physical disability equivalent to loss of earning. It is explained by way of illustration. If a Carpenter or driver will loose his hand due to amputation, the percentage of physical disability will be restricted to hand, but there may be 100 % functional disability as he is unable to drive or to do carpentry work. However, if Clerk will loose his hand by amputation his physical disability will not result into 100% functional disability because he can do other work.

18. In some of the judgments cited by Mr. Mendon, the observations in Rajkumar are considered. It is true the bench which delivered the judgment of *Rajkumar (supra)* was consisting of two Judges. Whereas in some of the judgments cited by Mr. Mendon, the bench consists of three Judges. Even the application of multiplier method was upheld (para no. 7 of the Erudhaya Priya's Judgment). It is very well true that the Tribunal has not applied the multiplier method while deciding the compensation towards disability.

19. I am not referring to each and every judgment relied upon by Mr. Mendon except the principles which are laid down in ***Rajkumar (supra)***. One cannot dispute that the Supreme Court has discussed the principle in an injury claim petition in Rajkumar case. In all the subsequent orders, the quantum is fixed on the basis of facts of the individual case involving occupation of Claimant, part of the body affected, whether it was permanent/partial and how such disability has affected his earning capacity.

20. In ***Rajkumar (supra)***, the meaning of permanent disability is explained as “*the residuary incapacity or loss of use of some part of the body, found existing at the end of the period of treatment and recuperation, after achieving the maximum bodily improvement or recovery which is likely to remain for the remainder life of the injured*”.

And the meaning of Temporary disability is explained as “*incapacity or loss of use of some part of the body on account of the injury, which will cease to exist at the end of the period of treatment and recuperation*”.

21. In ***Rajkumar (supra)*** there are also guidelines how to appreciate the evidence adduced about medical certificate. The tribunals should ascertain whether the treating doctor has issued the certificate, whether

such doctor is examined as a witness, satisfaction of the tribunal about the certificate and whether there is need to constitute medical board (para no. 12).

22. It is true the Supreme Court in case of *Rajkumar (supra)* has issued directions threadbare. Such directions do not find place in other judgments cited by Mr. Mendon.

23. When Ms. Chavan commented on the evidence of Mr. Diggikar, Medical Officer, Mr. Mendon relied upon observations in case of *Manoj Rahore Vs. Anil Raha*⁸, wherein the Tribunal and High Court has not accepted the evidence of medical officer (para nos. 6 and 7) because he has not examined the patient scientifically. In an appeal, the Supreme Court considered lack of challenge that the certificate was fake or assessment was not correct (para no. 10).

About disability

24. On this background, if the evidence of Dr. Diggikar from Sasoon Hospital is perused, we may find he has issued two certificates. They are :-

a) Exh. 33

dated 13.06.2005 issued on the basis of examination on 13.06.2005 certifying permanent disability for 65%.

b) Exh. 34

dated 14.10.2002 opining 100% temporary disability. Admittedly, Appellant has not taken treatment in Sasoon Hospital.

25. Whereas the Appellant in his examination-in-chief has said about disability to the extent of 65%. When the cross-examination is perused, it does not reveal that this part is seriously challenged. What was asked is when the Appellant resumed the duties on 17.07.2003, he had furnished a fitness certificate issued by the Doctor to his superior, this fitness certificate was issued by Sancheti hospital. It is very well true that Dr. Diggikar is not the Doctor who has treated the Appellant, but he is a Doctor who has examined him and issued the disability certificate. The issue is “*whether such certificate can be considered*”.

26. If we go by the test laid down in the *Rajkumar (supra)*, it can certainly be said that the certificate issued by Dr. Diggikar is not the certificate by treating doctor. At the same time, it is very well true, the testimony of the Appellant on the point of percentage of disability is not challenged during cross-examination. There is some inconsistency

in between the examination-in-chief and cross-examination of Dr. Diggikar. The certificate at Exh.33 which he has produced during his chief-examination certifies the percentage of disability as 65%. Whereas the certificate at Exh. 34 issued immediately opines that there was temporary disability at 100%. It is pertinent to note that Exhibit 33 was issued on 13.06.2005, whereas Exhibit 34 was issued on 14.10.2002 i.e. within six months from the date of accident. The Exhibit 33 was issued after almost three years. When Exhibit 34 was issued, accident has occurred recently whereas when Exhibit 33 was issued, Doctor was in a better situation to assess percentage of disability. That is why, due weightage has to be given to Exhibit 33, wherein it is mentioned that the permanent disability is 65%. Now the question arises what can be the functional disability and to what extent this disability has hampered his earning capacity.

27. As held in *Rajkumar (supra)*, a Clerk who is losing hand may not lose his job entirely, but he may continue the job but with a lesser post. In that case, he need not be awarded the compensation towards loss of future earning but can be awarded compensation under the head loss of amenities as a consequence of losing his hand. But if he

continues the job on a lower post, then if he is awarded loss of future earning capacity, then the compensation towards loss of amenities of life should be only token, otherwise it may amount to duplication. Para no. 10.

28. The Tribunal has granted Rs. 30,000/- towards future inconvenience in the enjoyment of life. Whereas the Appellant is claiming Rs. 1,00,000/- towards loss of expectation of life and Rs. 1,00,000/- towards loss of comfort and amenities. It is very well true, if the person has lost his hand, there are bound to be certain restrictions in his movement, it is going to affect his day to day functioning. He will not be as comfortable as he was earlier to amputation. Furthermore, there will be limitation on his day-to-day activities. He is unable to perform certain functions in his normal life. Hence, I am inclined to grant Rs. 1,00,000/- towards both the heads. Already the Tribunal has granted Rs. 30,000/-, I am enhancing it to Rs. 1,00,000/-.

29. Even though the percentage of physical disability is 65%, Dr. Diggikar has not explained this percentage of disability is over arm or over entire part of the body. How it affects the earning capacity cannot be opined by the Doctor, but it is a question depending upon facts and

circumstances. In this case, the Appellant was working as Clerk and it cannot be said that due to the amputation of the arm, he was not in a position to work in a postal department. It has come on record that he has resigned though the documents are not annexed.

30. Considering all the factors, I conclude that there will be 55% adverse effect on his earning capacity. The multiplier has to be applied and the loss of future earning has to be calculated. It is as follows :-

i)	Rs.8122 X 12 <u>X14</u>	yearly income comes to Rs. 13,64,496/-
ii)	55%	Rs.7,50,472.80/-.
iii)	the future prospects will be 30%	Rs. 2,25,141.84/-

Leave salary

31. The accident took place on 25.05.2002 and he joined the duty on 17.07.2003. During this period, he was on various kinds of leave. There is certificate issued by the department of Post at Exh. 27. The Appellant has claimed compensation for loss of earning during this period. This is disputed by Ms. Chavan.

32. Mr. Mendon relied upon the observations in case of ***Kersasp Mehta Vs. UOI***⁹. In that case the High Court has granted the damages

9 1986, ACJ 1002

towards the loss of earning during the leave period. The reason given is in future the employee may fall sick and if such an employee has exhausted all the sick leave, including sick leave taken during the period of hospitalization due to the accident, he cannot get a sick leave for future period and that is how the High Court has allowed the compensation towards loss of earning during that period. However, in this case, it has come on record that the Petitioner has resigned from the job. Though the date of resignation has not come on record, it is fact that he has resigned. So it is difficult to apply the analogy given in above said judgment. If he has resigned, there is no question of asking for further sick leave period and the possibility of the employer being denying the sick leave, because it is already exhausted on account of accident. So I am not inclined to grant the compensation for loss of earning during this period.

Medical Bills

33. When mediclaim was sanctioned by his employer, the question is whether he is entitled to claim that amount from the insurer. According to Mr. Mendon, the amount sanctioned by the employer was a part of the service condition and it does not relieve

the insurer from reimbursing the medical bills. Because the contract of the employment is different and contract of insurance is different and insurer is under statutory obligation to repay the medical bills.

34. Even though it is true that postal department has sanctioned Rs.1,13,127/- towards reimbursement of medical bills, out of the claim made by the Appellant before postal department for Rs.1,23,236/- and hence the Tribunal has awarded an amount of Rs.15,795/-. It is true this reimbursement is due to the condition of the service. It is true the contract of insurance stands on a different footing and as such the insurer is liable to reimburse an amount of Rs.1,23,236/-. Even though the Appellant has received certain sum by way of reimbursement from postal department.

Other Benefits

35. I am granting the compensation towards the attendant charges for 50,000/- because he was admitted in Sancheti Hospital on two occasions firstly after the accident and secondly in the month of August.

36. At the same time it is necessary to award the compensation towards the conveyance charges which I have quantified to

Rs.50,000/-. Tribunal has not granted any compensation towards future medical and hospital expenses. The Appellant has claimed Rs.1,00,000/-. Towards hospital and medical expenses, Tribunal has granted Rs.15,795/- towards expenses already incurred. So, future expenses cannot be more. At the most, I grant Rs.15,000/-. I do not find any enhancement is required in an amount of Rs.50,000/- granted by the Tribunal for pain and suffering. As such the Appellant is entitled to get an amount of Rs.11,92,851/-.

No.	Particulars	Amount granted by the Tribunal	Amount granted by this Court
1.	55% disability	Rs.65,000/-	7,50,472.80
2.	Future prospects 30%	Nil	2,25,141.84
3.	Loss of future expectation and comfort and amenities	Rs.30,000/-	1,00,000/-
4.	Attendant charges	Nil	50,000/-
5.	Conveyance Charges	Rs.10,000/-	Rs. 50,000/-
6.	Pain and Suffering	Rs.50,000/-	Rs.50,000/-
6.	Future surgery	Rs. 15,000/-	Rs.15,000/-
7.	Future Medical expenses	Nil	Rs.15,000/-
7.	Nourishing diet	Rs.25,000/-	Rs.25,000/-
8.	Hospital and medical expenses	Rs.15,795/-	Rs.1,23,236/-
	Total	Rs.2,10,795/- Rounded- 2,11,000/-	Rs.14,03,851/- Less 2,11,000/-
	Enhanced Amount		11,92,851/-

37. In view of that the following order is passed:-

ORDER

- 1) The Appeal is partly allowed.
- 2) The Appellant is entitled to get an amount of Rs.11,92,851/-
(Eleven Lakhs Ninety Two Thousand Eight Hundred and Fifty
One Rupees only) and the Respondents are directed jointly and
severally to pay that amount to the Appellant within a period of
8 weeks from the date of uploading of this order.
- 3) The Respondents are directed to pay this amount at the rate of
6% per annum from the date of filing of the petition till the
time the amount is paid.
- 4) The Appellant is entitled to enhanced compensation subject
deposit of deficit Court fees.

38. In view of that the Appeal stands disposed of.

[S. M. MODAK, J.]