IN THE HIGH COURT AT CALCUTTA

CIVIL REVISIONAL JURISDICTION

APPELLATE SIDE

Present:-

HON'BLE JUSTICE CHAITALI CHATTERJEE DAS.

FMA 1442 OF 2024

DEBABRATA MONDAL

VS.

THE NEW INDIA ASSURANCE CO. Ltd. & Anr.

For the Appellant : Ms. Sanat Kumar Mullick, Adv.

For the Respondent : Mr. Suchitra Paul, Adv.

Reserved On : 11.09.2026

Judgement On : 23.11.2026

Uploaded On : 23.11.2026

CHAITALI CHATTERJEE DAS, J. :-

1. This instant appeal is filed being dissatisfied with the award dated 6.7.2024 passed by the Learned Judge, Bench VII , City Civil Court at Calcutta and/or the Motor Accident Claims Tribunal at Calcutta in the matter of M.A.C.C no. 310 of 2009.

Brief Fact of the case

2. The application was filed by the present appellant before the Motor Accident Claims Tribunal for having compensation of Rs. 15 lakhs on account of fractured injury sustained by him in a road traffic accident which took place on 1.11.07 by the offending vehicle TATA 407 having registration no. WB – 25A/0354. The applicant being a legal practitioner and self-employed

claimed an amount of compensation of ₹15, 00, 000/- plus cost and interest from the date of filing of the complaint The claim application was contested by the New India Assurance Company by filing written statement. The learned Tribunal after assessing the evidences adopted by the claimant as well as the insurance company passed the award, allowing the prayer of the claimant to the extent of ₹2, 73,099.28/- along with interest @ 6% per annum from the date of filing of the claim application i.e. from 16.4.2009 till recovery of payment of adequate court fees. Being aggrieved thereby this appeal has been filed for enhancement of the compensation.

Submissions

3. The contention of the Learned Advocate representing the claimant was that on 1.11.2007 the accident occurred due to rash and negligent driving of the offending Truck while he was going to High Court, Calcutta driving his motorcycle along Canal West Road from North to South direction following extremely left side of the road , in front of premises at 19/1, West Canal Road, one TATA – 407 .The claimant fell down on the road from the motorcycle and sustained several multiple compound injuries on himself and was taken to the nearest R.G. Kar Medical Hospital and thereafter at New life Nursing Home for better treatment and since 1.11.2007, he was suffering and a large amount was spent towards his treatment, which had to be borrowed from his friends and relatives. Because of such injuries, he was out of his profession for long and suffered from financial losses and due to injury he also became permanently disabled to some extent in moving his left hand and this has hampered his profession to a great extent. Since he

suffered financial losses due to such accident and further became permanently disabled to the extent of 40% and made his claim application claiming an amount of Rs. 15,00,000/-

4. The claimant adduced evidences before the Tribunal and the learned Judge, Motor Accident Claims Tribunal framed the issues which includes whether the accident occurred due to rash and negligent driving of the driver of the offending vehicle and the petitioner, if is entitled to compensation of ₹1, 50, 0000/- as awarded .

It is further argued that the learned Tribunal considered the written objection filed on behalf of the Insurance Company who challenged the entitlement of the claimant to get any amount of compensation and also disputed the income, occupation, and address of the claim. It was also disputed that the claimant suffered any permanent disability and denied that the vehicle number WB– 20A/0354 was involved in the accident and was of the view that the Income tax return was submitted on 5.5.2009 when the accident occurred in the year 2007,hence the claimant failed to prove his income .The claimant prayed for compensation on account of disability to the extent of 40% of his loss of income but was observed by the learned Tribunal that the nature of injury sustained by the claimant and in absence of any material to suggest that he suffered from any permanent disability which can affect his efficiency and physical activity or the normal life of the claimant did not consider the prayer but allowed the medical expenses and an ad hoc amount of Rs. 1 lakh as compensation towards pain and sufferings without calculating the compensations in consonance with the

guidelines framed by the Hon'ble Supreme Court. The Learned Advocate relied upon the decision of Ld. Advocate further put reliance upon ***Satheesh E. versus New India assurance company Limited[1], Talalkena Gowdra Parameshwarappa vs Branch Manager, New India Assurance Company Limited and others[2]***. Accordingly prayed for modification of such award.

5. The learned advocate appearing on behalf of the on behalf of Insurance company /respondent on the other hand argued that firstly, the claimant/appellant failed to prove before the Tribunal that his vehicle was involved in the accident as he could not produce the driving license or other necessary documents usually carried while driving a vehicle. Secondly, there was no handicapped certificate issued from any government Hospital and the disablement certificate produced before the Court was issued after a delay of 5 years and that too not by his treating doctor assessed on the basis of the medical paper, which cannot be relied upon. Thirdly, the appellant could not produce any document regarding his monthly income in respect of the period. When the accident took place and he produced the income tax papers which was of the period after two years from the accident. It is further argued that the tribunal upon considering the entire evidences, both verbal and documentary calculated the compensation rightly and does not warrant any interference. Reliance was put upon the decision of ***Rajkumar versus Ajay Kumar & others***[3]**.** Further reliance was put upon the decision

[1] 2023 (1) T.A.C. 147 (S.C.)
[2] 2023(1) T.A.C 108 (SC)
[3] 2010 INSC 703

of ***Parminder Singh versus Honey Goyal, and others***[4]. Accordingly prayed for dismissal of the appeal.

Analysis

7. Heard the submissions of the learned advocates. On perusal of the materials and record, and considering the submissions made on behalf of the learned advocates, the seminal issue now falls for consideration is whether the learned tribunal was right in not calculating the compensation towards loss of future prospect and towards the pain and suffering, and also that he has suffered disablement to some extent. The case in hand demonstrate from the application that the claimant being a legal practitioner suffered an accident on the road in front of 19/1, Canal West Road, Kolkata, nine on 1.11.2007 at about 11.15 a.m. The learned Tribunal though not fully satisfied about the case of the claimant, allowed the compensation only the treatment cost of ₹1, 73, 099.288 and a consolidated amount of ₹1,00,000 towards his nature of profession and tentative deprivation from income during the period of treatment and recovery total ₹2,73,0099.28. The learned Tribunal was not satisfied that he suffered pain and suffering since no specific evidence was led. The nature of evidence as discussed above manifest that the claimant himself during his evidence disclose that he fell down on the road and sustained several multiple fractured injuries all over his person and were shifted to New Life Nursing Home from RG Kar Medical College and Hospital for better treatment where he was initially admitted. In support of his contention, he produced certain documents which were

[4] Manu /SC/0356/2025

marked with exhibit. During his cross-examination, he specifically mentioned that his left hand is not functioning properly due to consequence of the injury and also facing difficulties in his waist. His testimony reveals that he was admitted at RG Kar Medical College on 1.11.2007 and was released on his personal bond. However, no document of such hospital was produced before the court and insurance company also could not produce any documents to controvert the case of the petitioner that he did not get admitted in the hospital at the initial stage.

8. The certificate issued by Dr Prashant Kumar Mondal was dated 11.5.2012, and he perused the medical papers of New life Nursing Home dated 11.11.2007, which were proved by P.W.5 by producing the relevant documents. He claimed that he was admitted at Apollo hospital was also proved by producing document by P.W.6. Therefore, the accident and the subsequent injuries suffered by the claimant after being admitted to the hospital also support his case and his evidence could not be demolished in course of cross examination. It is undisputed that the certificate was issued long after five years from the date of alleged incident and issued on the basis of the clinical examination and examination of hospital papers , discharge certificate and the attending doctor's prescription and X-Ray plate with report by Dr PK Mondal who assessed the permanent disability of the patient to the extent of 40% due to painful stiffness of left shoulder and left elbow joint, weakness of left upper limb and is ischaemio contracture of flexors of left forearm causing clawing of fingers. The doctor being a retired professor and head of Department of orthopaedic surgery, Calcutta, National

Medical College and Hospital deposed before the court as P.W3. He stated during cross-examination that as per report dated 13.4.2012, there was old healed fracture distal end of left humerus . First implant was removed and second implant for the purpose of non- union. He calculated the disability of 40% with regard to the body as a whole. He specifically mentioned that no fractured injury was there in his right hand or any other part of body, except humus. Therefore, the above of medical papers and the observation of the concerned doctor demonstrate that the appellant suffered fractured injury and for the purpose of which twice implants were done, and it had to be removed. The specific part where the fractured injury was sustained is the top part of the arm between the shoulder and elbow in the left hand which is known as humerus. The petitioner claimed to have difficulties in writing with his right hand but no such injuries permanent in nature can be found from the medical papers. The discharge certificate of new life Nursing Home reveals that the patient suffered fracture due to RTA. From the admission form of Apollo Hospital, the final diagnosis shows that non-union hummus with implant in SITU (means in original position). The admission was on 3 July 2 008 and the procedure of implant removal and open reduction and internal fixation with LCP was done. The discharge certificate of New Life Nursing home also shows that he was admitted there from 1/11/07, to 11/11 07.

9. It is pertinent to refer to the case of ***Manju versus Avinash Singh and Others.***[5] where it was held that it is formally established that the standard of proof in proceeding before a motor accident claims tribunal is one of the

[5] 2026 SCC OnLine SC 1310

preponderance of probabilities and not proof beyond reasonable doubt as required in criminal trials.

In the case of ***Md. Sabeer vs U.P SRTC***[6] the Court took note of ***Rajkumar versus Ajay Kumar and Another (Supra)*** and reiterated that-

> *"8. 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, 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. What requires to be assessed by the Tribunal is the*

[6] (2023) 20 SCC 774

effect of the permanently 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 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."

10. In the decision of ***Talalkena Gowdra Parameshwarappa vs Branch Manager, New India Assurance Company Limited and Others (Supra)*** as relied upon by the appellant the accident was proved and also that the injured became permanently disabled due to fracture of Tibia bones of both legs and other injuries and he was not in a position to discharge his duties as a cleaner and accordingly, the permanent disability was considered as 40%, which was reduced by the High Court at 20%. The Hon'ble Supreme Court took note of ***Rajkumar versus Ajay Kumar and Another (Supra)*** and relied upon the observation made in this decision as follows:

"9. Therefore, the Tribunal has to first decide whether there is any permanent disability and if so the extent of such permanent disability. This means that the tribunal should consider and

decide with reference to the evidence: (i) whether the disablement is permanent or temporary; (ii) if the disablement is permanent, whether it is permanent total disablement or permanent partial disablement, (iii) if the disablement percentage is expressed with reference to any specific limb, then the effect of such disablement of the limb on the functioning of the entire body, that is the permanent disability suffered by the person.

If the Tribunal concludes that there is no permanent disability then there is no question of proceeding further and determining the loss of future earning capacity. But if the Tribunal concludes that there is permanent disability then it will proceed to ascertain its extent. After the Tribunal ascertains the actual extent of permanent disability of the claimant based on the medical evidence, it has to determine whether such permanent disability has affected or will affect his earning capacity.

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12. The Tribunal should also act with caution, if it proposed to accept the expert evidence of doctors who did not treat the injured but who give `ready to use' disability certificates, without proper medical assessment. There are several instances of unscrupulous doctors who without treating the injured, readily giving liberal disability certificates to help the claimants. But where the disability certificates are given by

duly constituted Medical Boards, they may be accepted subject to evidence regarding the genuineness of such certificates. The Tribunal may invariably make it a point to require the evidence of the Doctor who treated the injured or who assessed the permanent disability. Mere production of a disability certificate or Discharge Certificate will not be proof of the extent of disability stated therein unless the Doctor who treated the claimant or who medically examined and assessed the extent of disability of claimant, is tendered for cross- examination with reference to the certificate. If the Tribunal is not satisfied with the medical evidence produced by the claimant, it can constitute a Medical Board (from a panel maintained by it in consultation with reputed local Hospitals/Medical Colleges) and refer the claimant to such Medical Board for assessment of the disability.

13. We may now summarise the principles discussed above :

(i) All injuries (or permanent disabilities arising from injuries), do not result in loss of earning capacity.

(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).

(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."

11. The Doctor Who treated the claimant in that case considered the disability of 54% which was found by this Hon'ble Supreme Court on the higher side and assessed the whole body disability at 30% and accordingly enhanced the compensation under heads of pain and suffering due to two surgeries undergone and future surgeries to be undergone.

12. In this case, the claimant only adduced evidence to prove his case. He filed the certified copy of the FIR, the certified copy of seizure list, insurance policy of the offending, vehicle, voter card of the applicant, income tax returns, discharge certificate from the nursing along with the medical bills and voucher and the disablement certificate. However no copy of charge sheet has been produced before the Tribunal.

In his cross-examination, he deposed that he was continuing his legal profession, but facing some problems as his left hand was not functioning properly due to the consequences of the injury and he also suffered difficulties in his waist. He further deposed before the tribunal that at the time of accident, he was driving motorcycle which was owned by him. He did not file the driving license but assured to file the same. According to his testimony he was coming to High Court on the date of incident and after crossing Baghmari Bridge in the Canal West Road area of Narkeldanga Police Station while taking left a vehicle come from behind and dashed him. He did not file any application before.R.G. Kar Medical College and Hospital, Medical Board for issuance of disablement certificate. From his cross-examination, it further transpires that he denied not to have any driving license to drive the motorcycle. He could not recollect who lodged the complaint after his accident and denied that the accident took place due to his own negligence. He further deposed that he made an application before Medical Board for issuance of disablement certificate, but no certificate has been issued till he deposed before the court. He denied to be completely fit and has not suffered any permanent disablement.

Durga Das, wife of Ratan Kumar Das deposed as P.W.2 and eye witness of a road traffic accident which occurred on 1.11.2007 at about 11.15 A.M. She was walking through the said road from South to North for her personal business. When Tata 407 came with a high speed in a rash and negligent manner through Canal West Road and dashed one cyclist from behind, which was proceeding towards the left side of the road from North to South.

After the incident, the cyclist fell down and sustained grievous fractured injuries on his body. She, another pedestrians rushed to the spot and one Police personnel also appeared, who took him by a taxi to R.G Kar hospital. After taking the bags and some court papers of the injured. She also arrived at the hospital and handed over the papers, bag, etc., to the relatives of the injured. During her cross-examination she stated that she went to the Indane Gas supplier and hardware. She witnessed the accident near Bagmari Street. She could not recollect the motorcycle number, but she found the Tata 407 coming and dashing the motorcycle from behind. The offending vehicle was going from north to South. She denied that she was going from South to north and did not witness the accident.

13. In this case Dr Prashanth Kumar Mondal deposed as P.W. 3, being the retired professor and Head of Department of Orthopaedic surgery, Calcutta, National Medical College and Hospital. He deposed that on 11.5.2012, he examined claimant with history of motor vehicle accident on 1.11.2007 who sustained fractured left humorous lower 1/3rd due to RTA. He further deposed that on perusal of the clinical examination, examination of Hospital research certificate, attending doctors, prescription, plates with report, he assessed the permanent disability of the patient to the extent of 40% due to painful stiffness of left shoulder and left elbow joint, weakness of left upper limb, inchaemic contractor of flexors of left forum, causing clawing of fingers. The witness proved the certificate. During his cross-examination, he said that after five years from the date of accident, he examined the patient and assessed the disability on perusal of the medical papers and found an

old healed fracture distal ends of left humerus . First implant was removed, and the second implant was for the purpose of non-fractured injuries not in the right hand. There is no fractured injury on the other parts of the body, save and accept humerus. The witness further deposed that he was duly authorised to issue disability certificate without constituting Medical Board and it was to the extent of 40% .According to him disability is always assessed with regard to the whole body.

14. P.W.4 is a senior T.A of Income Tax department at Krishna Nagar, Nadia. He produced the authorisation letter issued by the I.T.O of ward number 41(4) Nadia. In his cross-examination, he said that it was I.T return of Assessment year 2007–08. He also produced the return for the assessment year 2009–10. A staff of New life Nursing Home deposed as PW5. He brought the copies of money receipts in respect of total payment of ₹35,000 to the nursing home and other payments for purchasing medicine from the pharmacy of the Nursing home as well as for some pathological test. In his cross-examination, he said he had no personal knowledge about the admission. The nature of treatment given and discharge of the patient and the original copies of the document which have been exhibited in his presence were handed over to the claimant.

15. P.W.6, Abhishek Basu Ray is a staff of Apollo Municipality Hospital, Kolkata who appeared before the Court on the basis of summons sent to Chennai Apollo and conveyed to their branch at Kolkata. He was authorised by Director of Medical Service, Dr Venkatasalam R.K to deposit in this case. He brought the certified copy of the bed head ticket in respect of patient, Mr.

Debabrata Mondal. The petitioner was admitted in accordance with such bedhead ticket from 3.7.2008 and discharged 9.7.2008 for treatment of implant removal. He produced the total bill amount of ₹1,02, 586.93/-. From his cross-examination, it can be found that his entire deposition before the court was based on the documents.

16. The instant Appeal has been filed on behalf of the claimant for enhancement of the compensation since the amount calculated is much less than the claim is entitled. Only ₹1,00,000/- has been considered for pain and suffering and ₹1,73,99.28/- for medical expenses when the claimant sustained fractured injury and he had to be treated at various hospitals, and for that reason suffered professional losses and also suffered permanent disablement. The learned advocate put reliance on the decisions reported in ***Talalkena Gowdra Parameshwarappa vs Branch Manager, New India Assurance Company Limited and others (Supra),*** where the just compensation was determined on the basis of the personal injuries and claimant was working as a cleaner. The applicant sustained comminated bone fracture of tibia on both legs and as per doctor; there was 54% disability despite the treatment given to Claimant. The court took the whole body disability at 30% and considered ₹1,00,000 for pain and suffering other than medical expenses, hospital expenses and ₹6, 12, 000 for loss of future earning capacity and allowed an amount of ₹1, 20, 000 for loss of income during paid up period. Furthermore allowed ₹1,00,000 for loss of future remedies and 30,000 for transportation etc., and Rs. 30,000 /-for

future medical expenses. Further directed that claimant is entitled to compensation along with interest at the rate @ 6% per annum.

17. In the case of ***Rajkumar versus Ajay Kumar & others (Supra)*** where it was held that-

> *"10. 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 ability (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."*

18. On behalf of Insurance company, the decision has been relied, decided on 18.3.2025 ***Parminder Singh versus Honey Goyal and others (Supra)*** where the claimant filed the appeal for enhancement of compensation, as

the claimant suffered grievous injuries resulting his disability. The High Court enhanced compensation by income of appellant against which the appeal was filed before the Hon'ble Supreme Court and it was held that the case pertains to the compensation awarded under the motor vehicles act.

19. In the instant case, the compensation was calculated as an ad hoc amount, which has got no basis in the eye of law since the Court is not doing any charity by allowing the compensation. When there is no contradictory statement regarding the injury suffered by the appellant and the Tribunal also accepts that the accident took place and allowed the compensation it was the duty of the tribunal to calculate the compensation in accordance with the guidelines framed by the Hon'ble Supreme Court for calculating the compensation. The Insurance Company did not challenge the award or filed any cross appeal to challenge that no accident took place with the two wheeler of the claimant as claimed.

20. The Learned Tribunal though discussed about the probability of contributory negligence did not arrive any specific conclusion about the same. The materials exhibited and proved by the Hospital authorities established the fact that there was an implant due to fractured injury which was removed, and the claimant had to remain admitted in the nursing home for a considerable period, therefore during such period he definitely suffered pain and also went through mental agony as to whether he would be able to continue with his profession. In addition admittedly during that time on account of his medical condition there was a time gap when he suffered financial losses since he could not attend court or pursue with his

profession. This court on careful consideration of the medical papers and the nature of injury sustained and the difficulties faced by the Claimant found that his left hand is not functioning properly due to consequence of injury and waist region .In his claim application also, he mentioned that multiple fatal injuries specially compound fracture sustained on left humerus and other several injuries but the doctors report and the medical papers do not suggest any such severe injuries or fractured injuries sustained in his waist .

Conclusions

21. Therefore, after careful examination of the materials on record and specially the medical papers coupled with the evidence of the doctor who issued the disablement certificate this court is of the view that the extent of disablement is assessed on higher side. The Hon'ble Supreme Court in case of fractured injuries on legs of a cleaner reduced the disablement from 54% to 30% in the case of ***Talalkena Gowdra Parameshwarappa (Supra),*** and hence this Court is also the view considering the situation to be taken as 20% and the compensation to be calculated on the basis of the same.

22. The claimant tried to establish his income at Rs.15,000/- per month, but he could not produce any document with regard to the same and considering his profession and Income tax return submitted of the year of 2009 that is of the period of two years after his accident approximately his income can be considered as of Rs. 10,000 per month during that time.

23. Therefore upon considering the facts and circumstances and from the evidence led by the appellant/Claimant, this Court propose to reassess the compensation as under;

Head	**Compensation Amounts(Rs._**
Pain and suffering	2, 00, 000/-
Medical expenses including hospital charges	1, 73,099/-
Loss of future earning capacity	20% of 10,000 x 12x15=3,60,000/-
Loss of income during treatment period	10,000x12= 1,20,000/-
Loss of future amenities	25,000/-
Future medical expenses	50, 000/-
Total	9, 28,099/-

24. Accordingly the Award passed by the Learned Tribunal is modified to the extent of calculation of compensation and the compensation is enhanced. The rest portion of the Award will remain same excepting the period of two months within which the amount was directed to be paid will be effective from this date of order .

The award is further modified with regard to the mode of payment as in. accordance with the direction of the Hon'ble Supreme Court and considering the prolong pendency of the matter ,direct the Insurance Company to transfer the amount directly to the account of the appellant in his account and accordingly the appellant is directed to furnish the bank details to the Insurance company forthwith.

25. Accordingly this Appeal stands allowed in part.

26. The parties are directed to act on the server copy of the order.

27. Hence this Appeal stands allowed in part.

28. Urgent certified copy if applied by any of the parties to be supplied subject to observance of all formalities.

(CHAITALI CHATTERJEE DAS, J.)

High Court
सत्यमेव जयते
Calcutta