

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NO(S). 1337-1338 OF 2019

[@ SPECIAL LEAVE PETITION (CIVIL) NO(S). 2738-2739 OF 2019]

**UTTAR PRADESH ROAD
TRANSPORT CORPORATION**

.....APPELLANT

VERSUS

VIBHOR FIALOK AND ANR

...RESPONDENT(S)

ORDER

1. Uttar Pradesh Road Transport Corporation (hereinafter referred to as the “Corporation” has filed this Appeal seeking reduction of compensation by challenging the common judgment passed by the High Court of Delhi¹ in MAC. APP. NO. 976/2017 and MAC. APP. NO. 585/2018 (hereinafter referred to as the Impugned order) whereunder the Appeal filed by the Corporation seeking reduction of compensation awarded to the Respondent No.1 (hereinafter referred to as Injured/Claimant) by the Motor Accident Claims Tribunal (hereinafter referred to as the MACT/Tribunal)² in a claim

petition³ filed by him under section 166 of the Motor Vehicles Act, 1988 was

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NIDHI AHUJA
Date: 2024.07.17
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Reason:

1 Hereinafter referred to as the ‘High Court’.

2 Motor Vehicle Claims Tribunal – I (Central), Delhi.

3 MACP No. 56356/2016 before the Motor Vehicle Claims Tribunal – I (Central), Delhi.

dismissed and the Appeal filed by the Claimant seeking enhancement of the compensation was partly allowed and the compensation was enhanced from Rs. 4,24,000 as awarded by the Tribunal to Rs. 30,91,482.

2. We have heard the learned advocates appearing for the parties and the details regarding the occurrence of the accident, issuance of policy to the vehicle and said policy being in force as on the date of the accident are not in dispute. Hence, these aspects are not delved upon in this appeal as it would be repetition of facts burdening the judgment. As the only issue before us is regarding the quantum of compensation, we are inclined only to discuss the same.

THE ORDER OF THE TRIBUNAL AND HIGH COURT

3. The claimant by filing a claim petition had sought for compensation of Rs. 50 lakhs on account of disability suffered due to injuries caused in the road accident that occurred on 04.08.2014. In order to prove his income, he contended he was owning a business under the name and style M/s. Fashion Fabric at 30/33 basement, West Patel Nagar, New Delhi and was earning Rs. 2.70 lakh per annum. However, as noticed by the Tribunal – when the claimant entered the witness box, he completely took a U-turn and contended that he was working in M/s. R.K. Enterprises and was earning Rs.2.70 lakhs per annum. Mr. Vikas Sahini, Field Supervisor of M/s. R.K. Enterprises was

examined as PW2 and he deposed that claimant was getting a salary of Rs.15,400/- p.m. It is important to note here that the claimant also filed three income tax-returns for the year 2012-13, 2013-14 and 2014-2015 wherein his gross salary was shown as Rs. 1,81,587, 2.34 lakh, and 2.70 lakh respectively. The Tribunal after considering the material available on record, did not consider the income tax returns on the ground that the gross salary shown in the ITR's was not commensurate to the amount the claimant earned while working in M/s. R.K. Enterprises. Therefore, Tribunal relying on the evidence of PW2 had considered the salary income of the claimant at Rs.15,400/- and accordingly computed the compensation. In so far as far as the disability is concerned, the Tribunal has relied on the testimony of PW3/Doctor, who testified that the claimant suffers from 40% permanent disability in relation to right lower limb and awarded compensation of Rs. 77,000 (15,400 x 5 months), considering the fact that he will not be able to work for a period of five months and awarded a compensation of Rs. 2,00,000 under the head loss of disfigurement/disability. The Tribunal in total awarded compensation of Rs. 4,24,000 with an interest at 9% p.a. from the date of filing the claim petition.

4. The Corporation filed an Appeal before the HC challenging the liability of the Corporation and also sought for reduction of the compensation and the Claimant also filed an appeal seeking enhancement of compensation.

The High Court vide the impugned order dismissed the Appeal filed by the corporation as meritless and allowed the Appeal filed by the injured claimant. The High Court while considering the aspect of income relied on the evidence of PW4/Income Tax Inspector and held that the Tribunal ought to have considered the income tax returns as the Claimant was also earning from his own firm as well. The High Court further held that the testimony of the doctor and the disability certificate which shows the injured suffers from 48% disability with respect to his right lower limb remained unchallenged, therefore considered the functional disability as 48% and added future prospects of 40% as held by this Court in *National Insurance Company Ltd. v. Praney Sethi*⁴ and enhanced the compensation from Rs.4,24,000 as awarded by the Tribunal to Rs. 30, 91, 482 with 9% p/a as interest.

THE CONTENTION OF THE PARTIES AND THE ISSUES.

5. Mr. Nishant Agarwal, counsel appearing on behalf of the Appellant-Corporation urged that the High Court has erred in awarding exorbitant compensation to the claimant as the High Court failed to arrive at a logical conclusion on the following grounds:

- i. That the High Court has erred in taking the whole body disability/functional disability suffered by the injured/claimant to be at 48%, when the disability certificate produced before the Tribunal

⁴ (2017) 16 SCC 680

shows that the claimant suffers from 48% of permanent disability in his right lower limb and the Claimant himself admitted in his cross-examination that he only faces difficulty in walking presently – therefore the High Court erred in fixing the whole body disability to be 48% which is on the higher side.

- ii. That the High Court has erred in awarding the future prospects to the injured-claimant – when the injured-claimant owns his own Textile Company in the name and style M/s. Fashion Fabric, therefore there is no future loss suffered by the claimant.

6. On the other hand, Mr. Pankaj Gupta, counsel appearing on behalf of the claimant supported the impugned judgment passed by the High Court.

7. Having heard learned advocates for the parties and on perusal of the records this court is of the considered view that the following points would arise for our consideration:

“I. Whether the High Court erred in granting future prospects to the injured claimant?

II. Whether the High Court erred in taking the percentage of functional disability at 48%, when the disability certificate refers to the percentage of disability to the right limb as 48%?”

8. Before moving on to discussion on the issues in detail, we would like to reiterate three settled propositions of law which would be applicable to decide the present Appeal, they are as follows:

- I. That the evidence cannot be lead beyond pleadings – It has been reiterated by this Court time and again in ***Srinivas Ragavendra Rao Desai v. V. Kumar Vaman Rao***⁵ that the evidence cannot be lead beyond pleadings in any matters of civil nature and the parties should confine their evidence to the pleadings.
- II. That the income tax returns can be considered as credible evidence for computing the Salary of the Claimant – This Court in ***Malarvizhi v. United India Insurance Company. Ltd.***⁶ and ***New India Assurance Company Ltd. v. Sonigra Juhi Uttamchand***⁷ has held that the Income Tax Returns are credible evidence in order to determine the income of the claimant provided that they are properly brought into evidence to enable the Tribunal to calculate the income.
- III. DETERMINATION OF PERCENTAGE OF DISABILITY: This Court in the landmark judgment of ***Raj Kumar vs. Ajay Kumar and Another***⁸ laid down guidelines to the Tribunal on how to asses future loss of earnings due to permanent disability. It would be appropriate to reiterate the principles as laid down in ***Rajkumar*** (*supra*), whereunder it was held:

⁵ AIR 2024 SC 1310.

⁶ (2020) 4 SCC 228.

⁷ (2025) 3 SCC 23.

⁸ (2011) 1 SCC 343

IV. “Assessment of future loss of earnings due to permanent disability.”

6. Disability refers to any restriction or lack of ability to perform an activity in the manner considered normal for a human-being. Permanent disability refers to 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, 6 after achieving the maximum bodily improvement or recovery which is likely to remain for the remainder life of the injured. Temporary disability refers to the 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. Permanent disability can be either partial or total. Partial permanent disability refers to a person’s inability to perform all the duties and bodily functions that he could perform before the accident, though he is able to perform some of them and is still able to engage in some gainful activity. Total permanent disability refers to a person’s inability to perform any avocation or employment related activities as a result of the accident. The permanent disabilities that may arise from motor accidents injuries, are of a much wider range when compared to the physical disabilities which are enumerated in the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (‘Disabilities Act’ for short). But if any of the disabilities enumerated in section 2(i) of the Disabilities Act are the result of injuries sustained in a motor accident, they can be permanent disabilities for the purpose of claiming compensation.

7. 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 different from 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 obviously exceed 100%.

8. in terms of the permanent disability with reference to the whole body, cannot. 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 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 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.* – 2010(10) SCALE 298 and *Yadava Kumar v. D.M., National Insurance Co. Ltd.* – 2010 (8) SCALE 567).

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.

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 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. For example, if the left hand of a claimant is amputated, the permanent physical or functional disablement may be assessed around 60%. If the claimant was a driver or a carpenter, the actual loss of earning capacity may virtually be hundred percent, if he is neither able to drive or do carpentry. On the other hand, if the claimant was a clerk in government service, the loss of his left hand may not result in loss of employment and he may still be continued as a clerk as he could perform his clerical functions; and in that event the loss of earning capacity will not be 100% as in the case of a driver or carpenter, nor 60% which is the actual physical disability, but far less. In fact, there may not be any need to award any compensation under the head of 'loss of future earnings,' if the claimant continues in government service, though he may be awarded compensation under the head of loss of amenities as a consequence of losing his hand. Sometimes the injured claimant may be continued in service, but may not found suitable for discharging the duties attached to the post or job which he was earlier holding, on account of his disability, and may therefore be shifted to some other

suitable but lesser post with lesser emoluments, in which case there should be a limited award under the head of loss of future earning capacity, taking note of the reduced earning capacity. It may be noted that when compensation is awarded by treating the loss of future earning capacity as 100% (or even anything more than 50%), the need to award compensation separately under the head of loss of amenities or loss of expectation of life may disappear and as a result, only a token or nominal amount may have to be awarded under the head of loss of amenities or loss of expectation of life, as otherwise there may be a duplication in the award of compensation.

11. The Tribunal should not be a silent spectator when medical evidence is tendered in regard to the injuries and their effect, in particular the extent of permanent disability. Sections 168 and 169 of the Act make it evident that the Tribunal does not function as a neutral umpire as in a civil suit, but as an active explorer and seeker of truth who is required to 'hold an enquiry into the claim' for determining the 'just compensation'. The Tribunal should therefore take an active role to ascertain the true and correct position so that it can assess the 'just compensation.'

.....

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 to 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."

9. Keeping these principles of law in mind, we proceed to adjudicate on the issues which arise for consideration in this Appeal.

REGARDING ISSUE NO. I

10. Considering the material available on record, the important question that arises for consideration before this Court is: what should be the income which is to be adopted to calculate the compensation under the head of “loss of future income”. It is to be noted here that the Tribunal and the High Court have given divergent opinion in this aspect, while the Tribunal considered the income of the Claimant to be Rs. 15,400 on the ground the claimant proved he was working in the R.K. Enterprises, the High Court has also accepted that the claimant was working in R.K. Enterprises but also held that he had income from his own business as well, therefore his income as to be determined considering the Income Tax Returns filed by the injured claimant. On perusal of the Award of the Tribunal it is clear that the Claimant while filing the Petition contended, he runs his own business and did not plead that he also works at M/s. R.K. Enterprises. It is trite law that no evidence can be led beyond pleadings, in the case at hand the Tribunal erred in allowing the claimant to lead evidence on the point that he was working in R.K. Enterprises, which was not pleaded in the claim petition. The Tribunal also erred in allowing PW2 to depose on the fact that the claimant was working in

R.K. Enterprises. Be that as it may, we are of the opinion that on the basis of evidence available on record i.e. Income Tax Returns, it can be inferred that the claimant's main source of income was from M/s. Fashion Fabric, a company run by him as pleaded in the claim petition. It is a settled position of law that, Income Tax Returns (ITR's) of the claimant are credible source of evidence and therefore the average of the ITR's filed by the claimant is to be considered for determining the monthly income of the claimant. Average of the Income Tax Returns filed by the claimant would be Rs. 2,27,660 annually $(1,81,587 + 2,33,523 + 2,67,870 \div 3)$ or Rs. 18,972 per month.

11. Now considering the issue at hand, it can be seen from records and as noted hereinabove, the Claimant runs a textile business under the name and style of M/s. Fashion Fabric and said business is continuing. Therefore, it can be seen that the claimant was having his own source of income and he would not lose the same because of the injuries suffered by him and therefore we are of the opinion that the claimant is not entitled to future prospects and the High Court erred in granting the same.

REGARDING ISSUE NO. 2

12. The important question which arises in this Appeal is the percentage of functional disability suffered by the claimant because of the injuries in the accident. Applying the method of assessment as extracted from the judgment of *Rajkumar (supra)* it can be seen that the Tribunal as well as the High Court

both erred in arriving at the functional disability suffered by the injured claimant. The Tribunal considered the functional disability to the whole body at 40%, contradicting PW3/Doctor who had deposed that claimant had suffered 40% permanent disability of right lower limb. The High Court further erred in arriving at a conclusion that whole body disability of the injured to be at 48%, when the disability certificate specifically indicates that claimant had suffered 48% disability to his right lower limb. There was no justification to arrive at a conclusion that claimant had suffered either 40% or 48% functional disability based on right lower limb disability being 48%. Hence, we are of the view that both the courts have erred in determining the percentage of functional disability.

13. Having regard to the aforesaid analysis, we turn our attention to the facts on hand the award of the tribunal would disclose that the claimant had sustained open grade III, B/L femur condyle with fracture SOF with fracture proximal fibula with ciley Pest (RT) side and other multiple injuries. He was hospitalized for about 14 days on account of the injuries sustained, claimant is said to have sustained 48% permanent disability to the right lower limb as deposed by the Dr. PW-3 who issued the said certificate. The said disability certificate remained unchallenged as rightly noted by the High Court. Thus, the assessment of compensation under the head of loss of future earning

would depend upon the affected impact of such disability on the earning capacity of the claimant. In the instant case, the tribunal as well as the High Court has arrived at a conclusion that there is permanent functional disability. However, it is not forthcoming from the award of the tribunal or the impugned judgment as to the corresponding functional disability. There may be case of whether the disability is permanent or temporary also. If the disablement percentage is expressed with reference to any specific limb, then effect of such disablement of the limb on the functioning of the entire body i.e. the permanent disability suffered by the person will have to be assessed/re-considered for the purposes of computation of compensation towards loss of future income. In the instant case, the tribunal has not ascertained the impact on the earning capacity of the claimant in future, by virtue of the disability sustained. However, it has proceeded to hold that there is 40% disability in relation to the right lower limb and has held that a sum of Rs.2 lakhs is to be awarded towards disfigurement/hardship/inconvenience caused due to such disability. The High Court in relation to the same has assessed the loss of future earning capacity by considering the functional disability to the whole body at 48% which has been held hereinabove as erroneous. Thus, this court will have to undertake the exercise of assessing the whole body disability and as per almanco manual, the whole body disability when compared to the

particular limb disability would be 1/4th in respect of that of the lower limb. In the instant case, the lower limb disability assessed by Dr. Lalit PW-3 is 48% and 1/4th of the same would be 12% and accordingly the compensation is being determined by considering the income of the claimant at Rs.18,972/-. Thus, compensation that becomes payable to the claimant for loss of future earning would be $18,972 \times 12 \times 17 \times 12\% = \text{Rs.}4,64,434.56/-$ and the compensation under the head of loss of earning during laid up period would be $\text{Rs. } 18,972 \times 5 = \text{Rs. } 94,860$ (considering the laid up period is for five months). The compensation awarded by the High Court towards medical expenses, conveyance charges, special diet, attendant charges, pain and suffering, loss of disfigurement remains undisturbed. Thus, the claimant would be entitled to in all a sum of Rs. 9,06,100/- under the following heads:

Head	Amount (in Rs.)
Loss of Future Earning Capacity	4,64,434.56
Loss of Income during laid up period (Monthly Income x 5)	94,860
Medical Expenses (after considering the medical bills produced)	8,250
Conveyance charges	7,000
Special Diet (Rs. 1000 per month x 9 months)	9,000
Attendant charges (Rs. 300 per day x 75 days)	22,500
Pain and suffering	1,00,000
Loss of Disfigurement/Disability	2,00,000
Total	9,06,044.56 rounded of to 9,06,100/-

14. Consequently, the Appeal is allowed. The Corporation is directed to pay a sum of Rs. 9,06,100/- with interest of 9% per annum from the date of filing of the claim petition. In case the Corporation has already paid any amount in excess of above-mentioned amount to the Claimant, it is at liberty to take steps to recover the same in accordance with law. Pending applications if any, is consigned to records, no order as to cost.

....., J.
[J.K. MAHESHWARI]

....., J.
[ARAVIND KUMAR]

**New Delhi;
February 18, 2025.**

ITEM NO.15

COURT NO.6

SECTION XIV-A

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal Nos. 1337-1338/2019

UTTAR PRADESH STATE ROAD TRANSPORT CORPORATION

Appellant(s)

VERSUS

VIBHOR FIALOK & ANR.

Respondent(s)

[ONLY PRAYER FOR INTERIM RELIEF IS LISTED UNDER THIS ITEM]
(IA No. 205974/2024 - EARLY HEARING APPLICATION)

Date : 18-02-2025 This matter was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE J.K. MAHESHWARI
HON'BLE MR. JUSTICE ARAVIND KUMAR

For Appellant(s) :

Ms. Garima Prashad, Sr. Adv.
Mr. Nishit Agrawal, AOR
Ms. Kanishka Mittal, Adv.
Ms. Nidhi Singh, Adv.
Mr. Sankalp Suman, Adv.

For Respondent(s) : Mr. Vaibhav Manu Srivastava, AOR

UPON hearing the counsel the Court made the following
O R D E R

1. The appeal is allowed in terms of the signed order. Pending applications, if any, is consigned to records, no order as to cost.

(NIDHI AHUJA)
AR-cum-PS

(NAND KISHOR)
ASSISTANT REGISTRAR(NSH)

[Signed order is placed on the file.]