



IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/FIRST APPEAL NO. 503 of 2016

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MAHADEV SANTABHAI PRAJAPATI

Versus

AYESHABEN IBRAHIMBHAI MANASIYA & ORS.

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Appearance:

MR. JARJEESKHAN(7235) for the Appellant(s) No. 1

MR ANKIT Y BACHANI(5424) for the Defendant(s) No. 4

MR RITURAJ M MEENA(3224) for the Defendant(s) No. 2

MR VIJAL P DESAI(5505) for the Defendant(s) No. 4

MS E.SHAILAJA(2671) for the Defendant(s) No. 5

RULE NOT RECD BACK for the Defendant(s) No. 3

RULE SERVED for the Defendant(s) No. 1

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CORAM: **HONOURABLE MR. JUSTICE J. C. DOSHI**

Date : 01/09/2026

JUDGMENT

1. The present First Appeal, under Section 173 of Motor Vehicles Act, 1988, is preferred by the appellant – original claimant being aggrieved and dissatisfied with the judgment and award dated 20.10.2012 passed by the Motor Accident Claims Tribunal, Palanpur in Motor Accident Claim Petition No.241 of 1999.

2. Brief facts of the case are as under:

2.1 claimant was travelling as a labourer in Tempo bearing registration No.GJ8-T-4765 on 6.9.1998. The driver was driving the tempo at a very high and excessive speed so as to



endanger human life and dashed against a stationary tractor-trolley from behind. As a result, the accident happened and the claimant and others suffered serious injuries. Hence, MACP is filed for claiming compensation of Rs.10 lakh.

3. Learned advocate for the appellant - claimant has submitted that the Tribunal has committed an error in not properly calculating the amount of compensation. He has submitted that amount of award is on lower side as the Tribunal has not properly considered the various aspects; like pain, shock and suffering, transportation, special diet, medical expenses etc.

3.1 He has submitted that the compensation is required to be enhanced by modifying the award impugned accordingly and this appeal may be allowed.

4. *Per contra*, learned advocate for respondent – Insurance Company has submitted that the impugned judgment and award passed by the Tribunal is just and proper and therefore, he prays to dismiss the appeal.

5. Apt to note that the Motor Vehicle Act, 1988 is a beneficial piece of Legislation. The concept of just and fair compensation is integral and seminal to the MV Act. The compensation to be awarded under the principle of just and fair compensation to the injured of the road accident or the legal representative/s of the deceased person is based on the principle of fairness, reasonableness and equability. Anguish of the heart or for mental turbulence being consequential result of the road



accident cannot be actually compensated, but the quint essentiality lies in adopting holistic and pragmatic view to the computation of the compensation for the loss sustained, which is to be in the realm of realistic approximation. Although exact or perfect arithmetical calculation of compensation for reparation of the loss arrived from the road accident is almost impossible. The Tribunal is bestowed with duty to make an endeavour to award just compensation regardless of the amount claimed by the claimant. The determination of the quantum of compensation therefore, must be liberal and not niggardly since the law values life and limb in a free country in generous scale. Needless to state that money may be awarded, so that something tangible may be procured to reach something else of the like nature, which has been destroyed or lost, but money cannot renew physical frame that has been battered and shattered being a result of the road accident. Yet Tribunal to endeavour to bring back victim to stage of pre-road accident as far as possible. Thus, the award must be reasonable and cannot be assessed with moderation though it cannot at the same time be pity and what could be granted must be just, fair and equitable compensation.

6.1 I have considered the submissions made by the rival parties. I have perused the record and proceedings of the Tribunal. I have gone through the impugned judgment and award passed by the learned Tribunal. From the record, it transpires that the claimant was working as labourer and amputation of his left leg reduced his capacity of working



completely. The work of a labourer is essentially a physical and manual avocation requiring continuous use and support of both legs. The material on record further reveals that on account of the injuries suffered in the accident, the appellant underwent amputation of his right leg above the knee. Therefore, it is a case of 100% injury.

6.2 The Hon'ble Apex Court in recent judgment in case of **M.Paramesh Versus Vrl Logistics Ltd., 2026 INSC 655**, held that issue of granting loss of future prospect is also integral part of granting just and fair compensation. Para 21 is relevant, which reads as under:-

"21. In Raj Kumar vs. Ajay Kumar and Another, (2011) 1 SCC 343 this Court has elaborately explained the distinction between physical disability and functional disability and has held that for the purposes of determining compensation, the effect of the permanent disability on the earning capacity of the injured is the relevant consideration. The relevant observations are reproduced hereinbelow:

"10. 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, the 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.

11. 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 the 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 SCC 254 : (2010) 3 SCC (Cri) 1258 : (2010) 10 Scale 298] and Yadava Kumar v. National Insurance Co. Ltd. [(2010) 10 SCC 341 : (2010) 3 SCC (Cri) 1285 : (2010) 8 Scale 567]

12. 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.

13. 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.



19. 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 the percentage of loss of earning capacity is the same as the 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."

(emphasis supplied) "



6.3 Simultaneously, if we go through the impugned judgment and award, the learned Tribunal granted compensation for actual loss of income which cannot be granted in case of 100% disability or a person rendered deadwood on account of accidental injury.

6.4 What further appears that the claimant has lost his left leg and therefore, he is required to have prosthetic leg and therefore, amount of compensation is also required to be granted for prosthetic leg. Attendant charges and other charges are also required to be enhanced simultaneously. In line of the aforesaid, the entire amount of compensation is required to be re-worked out.

6.5 Therefore, total compensation would be as under, which the claimant/s is/are entitled to get.

Particulars	Amount (Rs.)
Future loss of income (100% disability)	5,14,080/-
Pain, shock and suffering	2,50,000/-
Medical expenses	50,000/-
Special diet, attendant charges, transportation & prosthetic leg	3,00,000/-
Loss of amenities	1,00,000/-
Total...	12,14,080/-
Less : Amount which is already awarded	2,10,876/-
Additional amount which is awarded	10,03,204/-



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7. Therefore, I hold that the claimant are entitled to get the enhanced compensation of Rs.10,03,204/- with 7.5% p.a. interest from the date of filing the claim petition till its realisation, which would meet the ends of justice. Rest of the direction(s) of the Tribunal remain same.

8. For the reasons recorded above, the following order is passed.

8.1 The present appeal is **partly allowed**.

8.2 The Insurance Company is directed to deposit the enhanced amount Rs.10,03,204/- with 7.5% p.a. interest from the date of claim petition till its realization before the concerned Tribunal, within a period of 12 weeks from the date of receipt of this order.

8.3 It is clarified that amount of compensation of Rs.3 lakh granted under the head of special diet, attendant charges, transportation & prosthetic leg does not carry any interest.

8.4 The liability to pay 50% amount each for respondent Nos.1 and 2 on one hand and respondent Nos.4 and 5 on the other hand is maintained.

8.5 The Tribunal shall disburse the entire awarded amount lying in the FDR and/or with the Tribunal, with accrued



interest thereon, if any, to the claimant, by account payee cheque / NEFT / RTGS, after proper verification and after following due procedure.

8.6 While making the payment, the Tribunal shall deduct the courts fees, if not paid, in accordance with rules/law.

8.7 Record and proceedings be sent back to the concerned Tribunal, forthwith.

SHEKHAR P. BARVE

(J. C. DOSHI,J)