

**HIGH COURT OF TRIPURA
AGARTALA
MAC App. No.49 of 2024**

Smt. Jharna Rani Acharjee

W/O: Sri Kartik Acharjee,
Resident of Village Kacharibari, Upendranagar,
P.S. & P.O. – R. K. Pur, Gomati, Tripura, Pin-799105.

----- Appellant

Versus

1. Sri Tapan Saha,

S/O Haridas Saha,
Resident of Hapania, P.S. Amtala & P.O. Hapania,
Agartala, West Tripura, Tripura, Pin-799114.
(Owner & driver of vehicle bearing No.TR-01-E-2006,
Bolero Plus)

2. The New India Assurance Company Limited,

P.S. West Agartala, West Tripura, Tripura, Pin-799001.
(Insurer of vehicle bearing No.TR-01-E-2006, Bolero Plus)

----- Respondents

along with

CO(FA) No.7 of 2024

The New India Assurance Company Limited,

To be represented by Asstt. Manager,
4 Mantribari Road, P.O.-Agartala,
District- West Tripura, Pin-799001.

----- Insurer-Cross Objector Appellant

Versus

1. Smt. Jharna Rani Acharjee

W/O: Sri Kartik Acharjee,
of Kachari Bari, Upendranagar,
P.S. – R. K. Pur, Gomati, Tripura.

----- Claimant-appellant-Respondents

2. Sri Tapan Saha,

S/O. Sri Haridas Saha,
Resident of Hapania, P.S.-Amtali
Agartala, District – West Tripura.
(Owner-cum-Driver of offending vehicle No.TR-01-E-2006
Bolero Plus)

----- Owner-Respondents

In MAC App. No.49 of 2024

For Appellant(s) : Mr. J. Majumder, Adv.

For Respondent(s) : Mr. A. K. Deb, Adv.

In CO(FA) No.7 of 2024

For Cross-objector(s) : Mr. A. K. Deb, Adv.

For Respondent(s) : Mr. J. Majumder, Adv.

Date of hearing
and delivery of
Judgment & Order : 31.01.2025

Whether fit for
reporting : YES

HON'BLE MR. JUSTICE BISWAJIT PALIT

Judgment & Order(Oral)

This appeal under Section 173 of M.V. Act is preferred by the claimant-appellant for enhancement of the award dated 19.03.2024 delivered by Learned Member, Motor Accident Claims Tribunal No.2, Gomati District, Udaipur in connection with case No. TS(MAC) No.36 of 2020. The connected CO(FA) No.7 of 2024 is also preferred by the cross-objector-Insurance Company under Order 41 Rule 22 of CPC read with Section 151 of CPC against the appeal bearing No.MAC App. No.49 of 2024 filed by the respondent-claimant. Both the matters are taken up together for hearing and accordingly, by this judgment both the matters are disposed of.

2. Heard Learned Counsel, Mr. J. Majumder appearing on behalf of the claimant-appellant and also heard Learned Counsel, Mr. A. K. Deb appearing on behalf of the objector.

3. Before proceeding with the merit of the appeal, let us discuss about the subject matter of the claim petition for which this present appeal has arisen. The appellant as claimant filed one application under Section 166 of M.V. Act to the Learned Tribunal below claiming compensation due to injury suffered by a road traffic accident which took place on 27.11.2019 at about 11:30 am at Rajarbag Jeep Stand, Udaipur under R. K. Pur P.S. The claimant-

appellant in her claim petition stated that on 27.11.2019 at about 11:30 am when the claimant-appellant, Smt. Jharna Rani Acharjee was about to board the vehicle bearing registration No.TR-01-E-2006 (Bolero Plus) for proceeding towards Agartala from Udaipur Jeep Stand, that time, she had gone to the backside of the vehicle when the said vehicle dashed against her resulting which she sustained trauma on left eye and face following severe orbital fracture left side and multiple bleeding injuries all over her body. Soon after the accident, the victim was taken to Gomati District Hospital but considering the gravity of injuries, she was referred to AGMC & GBP Hospital, Agartala wherein she was admitted and treated up to 16.12.2019 as an indoor patient. Again, on 23.12.2019, the claimant-appellant was referred to Susrat Eye Foundation & Research Centre, Kolkata for better treatment. On 28.12.2019, the claimant-appellant had visited the said Research centre at Kolkata wherein several X-ray and medical examinations were done. After prolonged treatment also, the claimant-appellant did not recover from injuries and she had lost her eye sight. The claimant-appellant also averred that due to accident she had become permanently disabled and lost her working capacity and longevity of life. On this issue, a written ejahar was filed to O/C, R. K. Pur PS which was registered as R.K. Pur case No.200 of 2019 under Section 279/338 of IPC and also under Section 177/187 of M.V. Act. It was also stated that the accident took place due to rash and negligent driving of vehicle by the driver of the said vehicle bearing No.TR-01-E-2006. Hence, the appellant as claimant filed the claim petition claiming compensation.

The opposite parties contested the proceeding by filing written statement. The O.P. No.1 being the owner-cum-driver of the vehicle bearing No.TR-01-E-2006 (Bolero Plus) took the plea that there was no rash and negligent act on his part for the said accident and, as such, he denied the averments made by the claimant-appellant in her claim petition and further submitted that on the alleged day, the vehicle was duly insured with the respondent-Insurance Company. The respondent-Insurance Company also denied the assertions made by the appellant-claimant in the claim petition and submitted that the claim petition was subjected to strict proof by the claimant-appellant.

Upon the pleading of the parties, Learned Tribunal below framed the following issues:

- i) **Whether Smt. Jharna Rani Acharjee, W/O Sri Kartik Acharjee sustained injuries in a road traffic accident on 27.11.2019 at about 10:30 am at Udaipur Rajarbag Jeep Stand, under R. K. Pur due to rash and negligent driving by driver of the vehicle bearing No.TR-01-E-2006 (Bolero Plus).**
- ii) **Is the claimant entitled to be compensated under Motor vehicles Act, 1988? If so, to what extent and who shall be liable to pay such compensation?**

Before the Learned Tribunal below, the claimant-appellant was examined herself as PW-1 and she also adduced three other witnesses and in addition to that, she also proved some documents in support of her claim petition which were marked as Exhibits.

On the other hand, the owner-cum-driver of the vehicle bearing No.TR-01-E-2006 examined himself as OPW-1 and relied upon some documents which were also marked as Exhibits.

For the sake of convenience, the name of the witnesses and the documents of both the sides are mentioned hereinbelow:

Name of the witnesses of the claimant-appellant

1. PW-1: Smt. Jharna Rani Acharjee
2. PW-2: Sri Paritosh Barman
3. PW-3: Sri Asish Pal
4. PW-4: Dr. Debasree Debbarma

Exhibits of the claimant-appellant

1. Exbt. 1/1 to 1/8: Certified copy of FIR and Ejahar, seizure list and injury report in 8(eight) sheets.
2. Exbt.2: Certified copy of referral in 1(one) sheet.
3. Exbt.3/1 and 3/2: Certified copy of Final Report of R. K. Pur case No.200/2019 in 2(two) sheets.
4. Exbt.4: Certified copy of charge-sheet in 1(one) sheet.
5. Exbt.5: Disable certificate in 1(one) sheet.
6. Exbt.6: Discharge certificate in 1(one) sheet.
7. Exbt. 7/1 to 7/20: Prescriptions in original in 20(twenty) sheets.
8. Exbt.8/1 to 8/18: Cash memos in original in 18(eighteen) nos.
9. Exbt.9(series): CT Scan report in original in 2(two) sheets.
10. Exbt.10: Original income certificate in 1(one) sheet.
11. Exbt.11/1 to 11/10: Air ticket and Boarding pass in original in 10(ten) sheets.
12. Exbt.12 and Exbt. 13: Photocopy of Aadhaar Card and Voter ID Card which were exhibited after comparing with the original.

Name of the witness of Opposite Party:

1. OPW-1: Sri Tapan Saha

Exhibits of the Opposite Party:

1. Exhibit A: Photocopy of RC bearing registration No.TR-01-E-2006 which was exhibited after comparing with the original.
2. Exhibit B: Photocopy of driving licence in the name of OPW 1 which was exhibited after comparing with the original.
3. Exhibit C: Photocopy of Insurance Policy covering the period from 05-09-2019 to 04-09-2020 which was exhibited after comparing with the original.

Finally, on conclusion of enquiry, Learned Tribunal below allowed the claim petition filed by the claimant-appellant and awarded a sum of Rs.2,77,557/- and fastened the liability of

payment of compensation upon the Insurance Company. The operative portion of the judgment and award delivered by Learned Tribunal below is mentioned herein as under:

ORDER

19. In the result, it is hereby ordered that the claimant-petitioner is entitled to get compensation of Rs.2,77,557/- (Rupees two lacs seventy seven thousand five hundred fifty seven) only. The OP No.2 i.e. New India Assurance Company Limited, the insurer of the offending vehicle bearing Registration No.TR-01-E-2006 (Bolero Plus) is directed to make the payment of compensation to the claimant-petitioner within 30(thirty) days from today along with interest thereon @ 9% per annum from the date of filing of claim petition, i.e. 18.11.2020 till payment/realization of the same.

20. Supply a copy of the award to the parties free of cost.

21. Also send a copy of this judgment to the OP No.2 i.e. New India Assurance Company Limited, Agartala Branch through their Official email ID as earliest to do the needful.

22. The case is disposed of on contest.

Challenging the judgment/award, the claimant-appellant as appellant has preferred this appeal and the respondent-Insurance Company as objector has filed objection under Order 41 Rule 22 of CPC against the appeal preferred by the claimant-appellant.

4. In course of hearing of argument, Learned Counsel for the claimant-appellant first of all drawn the attention of this Court that in the claim petition, the claimant-petitioner claimed compensation for an amount of Rs.51,00,000/- but the Learned Tribunal below without appreciating the evidence on record determined lesser amount of compensation. He further stated that the monthly income of the claimant-appellant was Rs.10,000/- but the Tribunal only assessed the monthly income of the claimant-appellant at the rate of Rs.6000/- per month i.e. Learned Tribunal below counted 20 working days and determined the daily wages of the appellant at Rs.300/- per day which was too less considering the market condition on that

relevant point of time and Learned Counsel, further submitted that before the Learned Tribunal below, the claimant-appellant adduced the Doctor who issued the disability certificate and the Medical Officer opined that the appellant sustained permanent disability but the Learned Tribunal below only determined 40% disability at the time of determination of compensation resulting which the Learned Tribunal below at the time of delivery of judgment awarded very lesser amount. He further submitted that due to the accident, the appellant had to sustain huge amount for her treatment but the Learned Tribunal below at the time of determination of compensation did not allow attendant charges, transportation charges resulting which very minimum amount has been awarded which do not commensurate with the actual expenditure incurred by the claimant-appellant. Finally, Learned Counsel relied upon the judgment of Hon'ble Supreme Court of India reported in **2011(1) SCC 343** and referring different paragraphs, Learned Counsel submitted that in view of the principles of law laid down by the Hon'ble Apex Court, the present appellant needs to be awarded more enhanced amount which the Learned Tribunal below failed to consider and urged for awarding enhanced amount as per claim petition modifying the award.

5. On the other hand, Learned Counsel, Mr. A. K. Deb appearing for the objector-Insurance Company in course of hearing of argument drawn the attention of the Court that the Learned Tribunal below failed to appreciate the percentage of disability sustained by the claimant-appellant and awarded maximum amount which the claimant-appellant was not entitled to and furthermore,

the judgment and award of the Learned Tribunal below suffers from serious infirmities. In addition to that, Learned Counsel for the objector-Insurance Company relying upon the aforesaid judgment submitted that in the said judgment, Hon'ble the Apex Court observed as to how the compensation in respect of disability is to be determined/calculated by the Tribunal. So, Learned Counsel finally on conclusion of his argument submitted that there is no merit in this appeal and urged for dismissal of this appeal.

6. I have heard argument of both the sides and gone through the record of the Learned Tribunal below and the judgment and award delivered by the Learned Tribunal below. Admittedly, there is no dispute on record in this case regarding the fact of sustaining injury by the claimant-appellant due to road traffic accident on the alleged date and time. Now, here in this appeal, this Court is to see as to whether the compensation awarded by the Learned Tribunal below was proper or not. In this regard, both the parties in course of hearing of argument relied upon the judgment of Hon'ble Supreme court of India reported in **2011 (1) SCC 343 [Raj Kumar V. Ajay Kumar & Anr.]**. Learned Tribunal below at the time of delivery of judgment awarded Rs.14,450.56/- towards expenditure incurred for the purpose of the treatment in favour of the claimant-appellant. In addition to that, Learned Tribunal below awarded Rs.16,306.40/- for the purpose of flight tickets and boarding passes and towards loss of future income, Learned Tribunal below awarded Rs.25,200/- and towards temporary disability, Rs.2,01,600/- and also awarded Rs.20,000/- towards pain and sufferings. In total, awarded Rs.2,77,557/- in favour of the claimant-appellant.

7. Learned Counsel, Mr. Majumder in course of hearing submitted that the amount awarded Rs.14,450.56 for the purpose of treatment and for the purpose of air tickets, Rs.16,306.40, and there is no dispute on that because the claimant-appellant could not adduce any other documents for drawing inference by the Tribunal below. But in respect of determination of compensation towards loss of future income and compensation under temporary disability, Learned Tribunal below awarded very meagre amount including the amount awarded Rs.20,000/- towards pain and sufferings which was too less and beyond the law delivered by the Hon'ble Apex Court. Hon'ble the Apex Court in the aforesaid judgment in para No.6 observed as to how the compensation be determined in case of personal injury. For convenience, the said relevant paragraph is mentioned here as under:

"6. The heads under which compensation is awarded in personal injury cases are the following:

Pecuniary damages (Special damages)

- i) Expenses relating to treatment, hospitalisation, medicines, transportation, nourishing food, and miscellaneous expenditure.**
- ii) Loss of earnings (and other gains) which the injured would have made had he not been injured, comprising:**
 - a) Loss of earning during the period of treatment;**
 - b) Loss of future earnings on account of permanent disability.**

iii) Future medical expenses.

Non-pecuniary damages (General damages)

- iv) Damages for pain, suffering and trauma as a consequence of the injuries.**
- v) Loss of amenities (and/or loss of prospects of marriage).**
- vi) Loss of expectation of life (shortening of normal longevity).**

In routine personal injury cases, compensation will be awarded only under heads (i), (ii)(a) and (iv). It is only in serious cases of injury, where there is specific medical evidence corroborating the evidence of the claimant, that compensation will be

granted under any of the heads (ii)(b), (iii), (v) and (vi) relating to loss of future earnings on account of permanent disability, future medical expenses loss of amenities (and/or loss of prospects of marriage) and loss of expectation of life."

From the aforesaid para, it appears that the compensation can be awarded in respect of pecuniary damages and general damages. Pecuniary damages includes expenses incurred due to treatment, hospitalization, medicines, transportation, nourishing food including miscellaneous expenditure. Loss of earning covers (a) loss of earning during the period of treatment, (b) loss of earning on account of permanent disability, and future medical expenses and under the head non-pecuniary damages, Hon'ble the Apex Court observed that it may be termed as general damage which would cover (i) damages for pain, suffering and trauma (ii) loss of amenities (iii) Loss of expectation of life.

In course of hearing, Learned Counsel for the appellant submitted that the claimant-appellant sustained permanent disability but the Learned Tribunal below at the time of determination of compensation in para 16(1) awarded Rs.2,01,600/- as compensation under 'temporary disability' which was totally improper and not in accordance with the guideline laid down by the Hon'ble Apex Court in the aforenoted case.

8. For the sake of convenience, let us discuss the evidence on record of the parties. As already stated, the claimant-appellant and OP No.1 has adduced oral/documentary evidence on record. The claimant-appellant in her examination-in-chief in affidavit supported her version as mentioned in the claim petition. She further stated that due to accident she sustained permanent disability and her

monthly income was Rs.10,000/- per month. She produced one certificate but that was not considered by the Learned Tribunal below. During cross-examination by the contesting OPs save and except denial nothing came out relevant. Similarly, PW-2 Paritosh Barman in his examination-in-chief in affidavit tried to support the version of the claimant-appellant in her claim petition but during cross-examination by the opposite parties save and except denial nothing came out relevant. Similarly, PW-3 also deposed in the same manner. During cross-examination, save and except denial nothing came out relevant. Now, main part of evidence is evidence of PW-4, Dr. Debasree Debbarma because in course of hearing of argument, Learned Counsel for the appellant laid emphasis to the evidence of PW-4 and drawn the attention of the Court that the Learned Tribunal below did not consider the evidence of said PW-4 at the time of determination of compensation. Said PW-4, Dr. Debasree Debbarma deposed that on 27.05.2022, he was posted in the Gomati District Hospital as a Medical Officer and he was the member of Eye Department for issuing disability certificate and on that day, one disability certificate has been issued in favour of Jharna Rani Acharjee as she was having low vision and past history of trauma on left eye and she has sustained 40% temporary disability as per the guidelines under RPwD Act, 2016 and the certificate recommended for five years was valid till 27.05.2027. He further identified the signature in the disability certificate which was marked as Exbt.5/1. He further stated that there was no possibility to cure once anyone lost eye to the extent of 40% disability and also stated that initially they issued certificate for 5 years and later on it was extended time

to time by the authority and the trauma suffered by the claimant-appellant is permanent in nature. This witness was not cross-examined by the contesting opposite parties before the Tribunal. The evidence of OP No.1 is not required to be discussed here as the same is not disputed.

9. Learned Tribunal below determined the disability of the claimant-appellant as 'temporary disability' relying upon Exbt.-5. For the sake of convenience, the relevant portion of the disability certificate is extracted herein below:

Disability Certificate
Issuing Medical Authority, Gomati, Tripura

Certificate No.: TR0730719820034218 Date: 27/05/2022

This is to certify that I/we have carefully examined Smt. Jharna Rani Acharjee, Daughter of Shri Pran Gopal Acharjee, Date of Birth 01/01/1982, Age 40, Female, Registration No.1607/00000/2205/1865617, resident of House No.Mirza Upendranagar, Kakraban, Udaipur-799105, Sub District Kakraban, District Gomati, State/UT Tripura, whose photograph is affixed above, and I am/we are satisfied that:

(A) She is a case of Low Vision

(B) The diagnosis in her case is WNL, POST TRAUMATIC

(C) She has 40% (in figure) Forty percent (in words) Temporary Disability in relation to her as per the guidelines (Guidelines for the purpose of assessing the extent of specified disability in a person included under RPwD Act, 2016 notified by Government of India vide S.O. 76(E) dated 04/01/2018.

This certificate recommended for 5 year(s), and therefore this certificate shall be valid till 27/05/2027.

It appears that the certificate was issued on 27.05.2022 and the same was valid till 27.05.2027 for a period of 05(five) years. The alleged accident took place on 27.11.2019. The claimant-appellant could not produce any other disability certificate of the earlier period except Exbt.-5.

10. Hon'ble the Apex Court in the aforesaid judgment in para Nos.8 to 12 observed as under:

"Assessment of future loss of earnings due to permanent disability

8. 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, 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 accident 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 ("the 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.

9. 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 not the same as 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 in terms of the permanent disability with reference to the whole body cannot obviously exceed 100%.

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 and *Yadava Kumar v. National Insurance Co. b Ltd.* : (2010) 10 SCC 341.

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."

From the aforesaid paragraphs, it appears that how the disability is to be ascertained by the Tribunal. Here in the case at hand, based on Exbt.-5 i.e. the disability certificate, the Tribunal came to the observation that the claimant-appellant sustained 40%

temporary disability but if we go through the evidence of PW-4 who although admitted the issuing of certificate by him as one of the member and identified his signature marked as Exbt.5/1 but in the last part of his evidence, he stated that the trauma suffered by the appellant was permanent in nature.

11. Learned Counsel for the appellant also referred the schedule-I part-II of the Employees compensation Act, 1923 wherein serial No.25, the percentage of loss of earning capacity is shown as 40% and also referred the provision of RPwD Act, 2016 and submitted that the Learned Tribunal below at the time of determination of compensation failed to appreciate the said percentage of disability.

12. In course of hearing, Learned Counsel for the objector, Mr. A. K. Deb in support of his contention referred para Nos.16 and 17 of the said judgment which is also reproduced herein below:

"16. 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". While dealing with personal injury cases, the Tribunal should preferably equip itself with a medical dictionary and a handbook for evaluation of permanent physical impairment (for example, *Manual for Evaluation of Permanent Physical Impairment for Orthopaedic Surgeons*, prepared by American Academy of Orthopaedic Surgeons or its Indian equivalent or other authorised texts) for understanding the medical evidence and assessing the physical and functional disability. The Tribunal may also keep in view the First Schedule to the Workmen's Compensation Act, 1923 which gives some indication about the extent of permanent disability in different types of injuries, in the case of workmen.

17. If a doctor giving evidence uses technical medical terms, the Tribunal should instruct him to state in addition, in simple non-medical terms, the

nature and the effect of the injury. If a doctor gives evidence about the percentage of permanent disability, the Tribunal has to seek clarification as to whether such percentage of disability is the functional disability with reference to the whole body or whether it is only with reference to a limb. If the percentage of permanent disability is stated with reference to a limb, the tribunal will have to seek the doctor's opinion as to whether it is possible to deduce the corresponding functional permanent disability with reference to the whole body and, if so, the percentage.

Referring the same, Learned Counsel for the objector submitted that Learned Tribunal below failed to appreciate the percentage of disability at the time of determination of compensation in view of the principle of law laid down by the Hon'ble Apex Court.

13. In this regard, Hon'ble the Apex Court in the aforementioned judgment in para No.19(iii) further observed as under:

"19. We may now summarise the principles discussed above:

(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."

From the above, it appears that in view of the principle of law laid down by the Hon'ble Apex Court, the loss of earning capacity is to be assessed by the Tribunal with reference to the evidence in entirety because the Medical Officer can only say the extent of permanent disability but simply on the basis of evidence of Medical Officer, there is no scope on the part of the Tribunal to rely upon the said evidence in entirety rather Tribunal is to assess the compensation after considering the evidence on record.

14. We have already referred the evidence of PW-4 i.e. the doctor who examined the claimant-appellant. The claimant-appellant in her examination-in-chief in affidavit in para No.4 stated that due

to accident she is not able to do any work as he sustained injury to her one of the eye which according to PW-4 was permanent in nature although the certificate recommended showed to be temporary disability with an observation of 'low vision' and 40% temporary disability as per the guidelines of the RPwD Act, 2016 issued by the Government of India vide S.O. 76(E) dated 04.01.2018. Although PW-4 was not cross-examined by the cross-objector and since the claimant-appellant relied upon said Exbt.-5, so, in view of the provision provided under Section 92 of the Evidence Act, there is no scope to disbelieve Exbt.-5 because the appellant relied upon said Exbt.-5 and it was not the case of the appellant that Exbt.-5 was not a genuine one because in this case, if the evidence of PW-4 is relied upon then there is very least scope to rely upon Exbt.-5 in total and it was not the case of the appellant that Exbt.-5 was disputed rather the appellant proved the said document in support of her claim petition which was marked as Exbt.-5 after admission by both the sides. The contesting parties before the Learned Tribunal below did not cross-examine PW-4 nor disputed the signature of PW-4 on Exbt.-5. Now, at the stage of appeal as raised by Learned Counsel for the objector, there is no scope to dispute the evidence of PW-4 and also the genuineness of Exbt.-5. So, the submission of Learned Counsel for the objector cannot be accepted at this stage.

15. Now, under the head disability, the Learned Tribunal below calculated the amount as under:

- i) Annual Income-Rs,1,00,800/-
- ii) 40% temporary disability on the aforesaid income –
Rs.40,320/-

- iii) 40% temporary disability for five years as recommended by the board—Rs.40,320/- x5=Rs.2,01,600/-

The Learned Tribunal below also awarded loss of future income at Rs.25,200/- which in my considered view, the said amount of calculation was not in accordance with the guideline of the Hon'ble Apex Court in aforementioned judgment. The appellant stated that she was a tailor by profession and her monthly income was Rs.10,000/- although the document relied upon by her was not accepted by the Tribunal as the author of such document was not produced by the claimant-appellant. The Tribunal below at the time of determination of compensation decided the working days of the appellant only for a period of 20 days in a month at the rate of Rs.300/- per day i.e. Rs.6,000/-, which in my considered view, that was not proper. The accident took place in the year 2019 and as a shopkeeper or an employee, she might have worked 25 days in a month excluding the holidays and considering the market condition of that relevant point of time prior to accident her daily wages ought to have taken into consideration at a minimum level of Rs.400/- per day. Situated thus, her monthly income can be easily calculated at Rs.10,000/- per month (Rs.400/- per day x 25) which the Learned Tribunal below has failed to consider at the time of delivery of judgment. Thus, the monthly income of the appellant is assessed to Rs.10,000/- per month and with that amount, 40% would be added as future prospects. Thus, the monthly income would be treated as Rs.14,000/-. The claimant was prevented from doing her normal works for a period of three months, in that situation, the loss of future income would be around Rs.42,000/- (Rs.14,000/- x 3) which

the appellant is entitled to be awarded. In addition to that, since the appellant relied upon Exbt.-5 and also at the same time, relied upon the evidence of PW-4 and it was not the case the appellant that she did not rely upon Exbt.-5 i.e. the disability certificate, so, at this stage, there is no scope either by the appellant or by the objector to disbelieve that document in view of the provision of Section 92 and 94 of the Indian Evidence Act and furthermore, from the facts and circumstances of the case, there is also no scope to disbelieve that the present appellant become permanently disabled to do any job. However, since the monthly income is modified to Rs.14,000/-, so, the compensation under the head of temporary disability would be $((Rs.14,000 \times 12) \times 40\%) \times 5 = (Rs.1,68,000/- \times 40\%) \times 5 = Rs.67,200/- \times 5 = Rs.3,36,000/-$ as recommended by the medical board which the appellant will be entitled in this case. In addition to that, the appellant will also be entitled to Rs.1,00,000/- towards the head 'pain and sufferings' in place of Rs.20,000/- awarded by the Tribunal below and furthermore, it appears that the appellant was under treatment with effect from 27.11.2019 to 16.12.2019 and thereafter, with effect from 28.12.2019 to 04.01.2020 i.e. 28 days but no amount was awarded to her for attendant charges by the Tribunal, so, the appellant is also entitled to two attendants per day at the rate of Rs.600/- per day i.e. Rs.1200/- for the aforesaid 28 days and on calculation, the amount comes to Rs.33,600/-. So, this amount of Rs.33,600/- is also awarded in favour of the appellant for the purpose of attendant charges under the head pecuniary damages. As the appellant could not place any other documents in support of her treatment and for the purpose of expenses relating to journey

sustained by her and in course of hearing, Learned Counsel for the appellant could not submit anything in this regard. So, the said amount is also concurred by this Court without any interference. Thus, after hearing both the sides, it appears that in total the appellant would be entitled to (Rs.42,000/- + Rs.3,36,000/- + Rs.1,00,000/- + Rs.33,600/- + Rs.14,450.56/- + Rs.16306.40/-) =Rs.5,42,356.96/- in this case from the Insurance Company.

Since there was no dispute on record regarding liability of payment of compensation by the objector-Insurance Company, so, the objector-Insurance Company will be under legal obligation to pay the said amount to the claimant-appellant. In course of hearing, Learned Counsel for the appellant submitted that the awarded amount as per Judgment and award of Tribunal has already been paid by the objector-Insurance Company to the claimant-appellant. So, the balance amount as per judgment passed by this Court shall have to be paid by the objector-Insurance Company to the claimant-appellant.

16. In the result, the appeal filed by the claimant-appellant is partly allowed and the CO(FA) filed by the objector-Insurance Company stands rejected being devoid of merit. The judgment and award dated 19.03.2024 is modified/enhanced to the extent that the New India Assurance Company Limited shall pay the total amount of compensation as per judgment passed by this Court to her amounting to Rs.5,42,356.96/- along with 9% interest as already awarded with effect from the date of filing claim petition i.e. 18.11.2020 to till the date of realization after deducting the amount, if already been paid by the Insurance Company to the appellant as

per earlier award dated 19.03.2024 made by the Learned Tribunal below within a period of two months from the date of passing of this judgment/award.

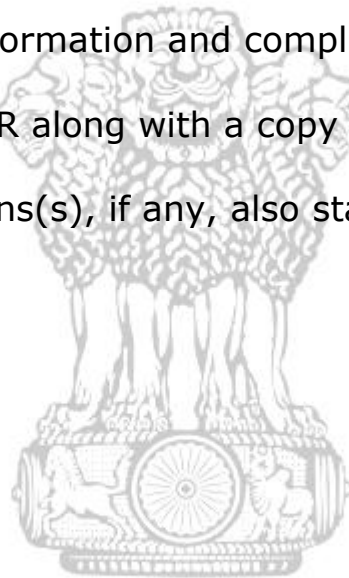
With this observation, the appeal and the connected CO(FA) are disposed of. The balance amount shall be deposited by the objector-Insurance Company to the Registry of the High Court within a period of 02(two) months from today.

Supply a copy of this judgment/order to the Learned Counsel for the claimant-appellant for information. Also, a copy of this judgment be supplied to the Learned Counsel for the objector-Insurance Company for information and compliance.

Send down the LCR along with a copy of this judgment.

Pending applications(s), if any, also stands disposed of.

JUDGE



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