MHMT010018852023

Presented on : 29.09.2023
Registered on :11.12.2023
Decided on : 19.08.2026
Duration : **2Y 10M 21D**

Exh.

BEFORE THE MOTOR ACCIDENT CLAIMS TRIBUNAL, MUMBAI

(Presided over by Monica I. Arland, Chairman)

Motor Accident Claims Petition No.1735 of 2023

Ganesh Shankarrao Shrimanwar
Aged about 58 years,
Residing at:
R.No.28, Shiv Parvati HIG Colony,
Near ITI Nanded-431 602. ... **Applicant**

-**Versus**-

Yewale Suryakant
Po. Chandkhed, Shine Wasti Road,
Pachane Mawal,
Pune-410 507. ... **Opposite party**
(Owner of Motorcycle No.MH-04-JU-1970)

- **And** -

Go Digit General Insurance Co. Ltd.
Mumbai Business Centre,
Tower I, 1201,
India Bull Finance Centre,
SB Road, Elphinstone (W),
Mumbai-400 013. ... **Insurer**
(Insurer of Motorcycle No.MH-04-JU-1970)

Petition for compensation amount Rs.1,00,000/-

Mr. V.P. Puri	- Advocate for the Applicant.
Opposite party	- Exparte
Mr. U.V. Shroff	- Advocate for the Insurer.

JUDGMENT

(Delivered on this 19th August 2026)

1. This petition has been filed by the applicant under Section 166 of the Motor Vehicles Act for grant of compensation of Rs.1,00,000/- from the opposite party and its insurer.

2. According to the applicant, on 21.8.2023 at about 8:30 hrs., he was proceeding on his Scooter No.MH-26-BG-0450. When he reached Opposite Chandrana Hotel, Maruji Nere Road, Dattawadi, Tal. Mulshi, Dist. Pune, at that time one motorcycle No.MH-14-FZ-8661 came from behind, in a rash and negligent manner and dashed his scooter from the rear side. He was treated at Ruby Hall Clinic at Hinjewadi from 21.8.2023 to 28.8.2023. He sustained communited fracture right patella. He spent Rs.2,50,000/- for treatment, special diet and conveyance.

3. The Police Station, Hinjewadi registered an offence against the driver of motorcycle No.MH-14-FZ-8661 vide Cr.No.0982/2023 for the offence punishable U/s.279, 337, 338 and 427 of Indian Penal Code read with Section 184, 119 and 177 of Motor Vehicles Act, 1988.

4. At the time of accident, the applicant was doing business under the name and style “M/s. Shri Electronic & Appliances” and was earning Rs.7,35,000/- p.a. Therefore, he filed this petition and claimed compensation of Rs.1,00,000/- from the opposite party and its insurer.

5. The Opposite party though duly served with notice vide Exh.8 but failed to appear. Hence, by order dated 13.03.2025 vide Ex.1, the matter was proceeded Ex-parte as against the opposite party.

6. The Insurer has filed written statement vide Exh.13 and resisted the claim of the applicant. However, admitted that the offending vehicle was covered at the material time under policy of insurance. It is contended that the applicant was guilty of contributory negligence as he had opportunity to avoid and avert the said alleged accident. It is also contended that the applicant was riding the said motorcycle without wearing the helmet. It is further contended that the driver of the offending motorcycle No.MH-14-FZ-8661 was not holding valid and effective driving licence and therefore committed breach of terms and conditions of the Insurance policy. Hence prayed for dismissal of the petition.

7. My predecessor framed Issues vide Ex.14 on 13.03.2025. I reproduce the same and record my finding thereon for the reasons given below.

Sr. No.	**Issues**	**Findings**
1.	Does the applicant prove that on 21.08.2023, at about 08:30 hrs., opposite Chandrama Hotel, Maruji Nere Road, Dattawadi, Tal. Mulshi, Dist. Pune, he sustained injuries in vehicular accident which occurred due to rash and negligent driving on the part of driver of motorcycle No.MH-14-FZ-8661?	**Affirmative**

2.	Does the Insurer prove the defences raised and particularly that the owner of offending vehicle committed breach of terms and conditions of insurance policy at the time of accident, so not liable to pay any compensation?	**Affirmative**
3.	Is the applicant entitled to compensation? If yes, to what extent and from whom?	**Yes. Rs.5,11,745/- . Insurer to pay first and then recover from the Owner.**
4.	What Award?	**As per final order**

REASONS

As to Issue No.1:-

8. In order to prove the contentions made in the petition, the applicant has examined himself vide Exh.15 who proved the documents Exh.18 to Exh.25. He further examined Dr. Naresh Khanna (AW2) vide Ex.26 who proved Ex.27.

9. To prove its defence the Insurer has examined Nehal Suresh Sarkate as DW1 vide Ex.30 who proved documents Ex.35 to Ex.37.

10. Perused the record. Heard learned counsel Shri. V.P. Puri for the applicant and learned counsel Shri. U.V. Shroff for the insurer.

11. Perused written notes of argument tendered by

the learned counsel for the Insurer and applicant vide Ex.40 and Ex.41 respectively.

12. It is argued by the learned counsel for the applicant that on 21.8.2023 at about 8:30 hrs., the applicant was proceeding on his Scooter No.MH-26-BG-0450 and when he reached Opposite Chandrana Hotel, Maruji Nere Road, Dattawadi, Tal. Mulshi, Dist. Pune, at that time one motorcycle No.MH-14-FZ-8661 came from behind, in a rash and negligent manner and dashed his scooter from the rear side. It is also argued that Insurer has failed to examine the rider of the offending motorcycle to draw adverse inference against them. It is further argued that the accident took place due to negligence of the driver of the offending vehicle and the applicant has not contributed to the accident. He argued that the applicant was treated at Ruby Hall Clinic at Hinjewadi from 21.8.2023 to 28.8.2023. He also argued that the applicant sustained communited fracture right patella.

13. It is further argued that the Police Station, Hinjewadi registered an offence against the driver of motorcycle No.MH-14-FZ-8661 vide Cr.No.0982/2023 for the offence punishable U/s.279, 337, 338 and 427 of Indian Penal Code read with Section 184, 119 and 177 of Motor Vehicles Act, 1988.

14. In support of the contention the learned counsel for the applicant relied on following citations :

- **Popat V/s. Shankar & Anr. 2017 (1) TAC 384 (Bom.)**
- **Reliance General Insurance Co. Ltd. V/s. Mubarak Ali Hamid Sayyed & Anr. 2022(3) TAC 455 (Bom.)**
- **New India Assurance Co. Ltd. V/s. Dolly Satish Gandhi & Anr. 2026 (2) TAC 705 (SC)**
- **National Insurance Co. Ltd. V/s. Smt. Jayashri & Ors. 2015 (1) TAC 418 (Bom.)**
- **Jawahar Singh V/s. Bala Jain & Ors. 2011 ACJ 1677 S.C.**
- **Cholamandalam MS General Insurance Co. Ltd. V/s. Munni Bai & Ors. 2025 ACJ 821 H.C.**
- **Branch Manager, SBI General Insurance Co. Ltd. V/s. Muthulakshmi & Ors. 2025 ACJ 1925**
- **Dattatraya & Anr. V/s. Shrihari & Anr. 2025 ACJ 466 H.C. (Bom.)**
- **Dattatray Jayram Ambre V/s. Raghuvir Anand Ambre dated July 9, 2025**
- **Ramla & Ors. V/s. National Insurance Co. Ltd. & Ors. 2019 (1) TAC 1 (S.C.)**

15. The applicant, Mr. Ganesh Shankarrao Shrimanwar (AW1) has testified vide Ex.15 and he reiterated about the incident. According to him, on 21.8.2023 at about 8:30 hrs., he was proceeding on his Scooter No.MH-26-BG-0450. When he reached Opposite Chandrana Hotel, Maruji Nere Road, Dattawadi, Tal. Mulshi, Dist. Pune, at that time one motorcycle No.MH-14-FZ-8661 came from behind, in a rash and negligent manner and dashed his scooter from the rear side. He was treated

at Ruby Hall Clinic at Hinjewadi from 21.8.2023 to 28.8.2023. He testified that his right leg below knee was operated in the said hospital. He deposed that in the accident he sustained comminuted fracture right patella.

16. He deposed that Police Station, Hinjewadi registered an offence against the driver of motorcycle No.MH-14-FZ-8661 vide Cr.No.0982/2023 for the offence punishable U/s.279, 337, 338 and 427 of Indian Penal Code read with Section 184, 119 and 177 of Motor Vehicles Act, 1988.

17. He proved FIR (Ex.18), spot pachnama (Ex.19) and original discharge summary of Ruby Clinic (Ex.22).

18. He was cross examined from the side of the learned counsel for the Insurer. He was confronted about the place of his present place of residence wherein he replied Nanded. He admitted that in the accident two vehicles are involved. However, volunteered that he was driving his vehicle. He denied that he is also equally responsible for the alleged accident. He also denied that there was no fault on the part of the driver of the offending vehicle. He further denied that the false offence is registered against the offending vehicle.

19. He denied that he did not sustain any accidental injury so also was never admitted and treated and further did not pay any amount towards medical expenses. He also

denied that he is fit and fine and did not sustain any physical disability.

20. At the outset, it is to be seen as to whether the applicant sustained grievous injuries/permanent disability in the accident which took place on 21.8.2023 at about 8:30 hrs. while he was proceeding on scooter. In this respect, the police papers are required to be scrutinized. The copy of FIR Ex.18 and Spot Panchanama Ex.19 are filed on record. On perusal of the FIR it discloses that the offence was registered against the driver of motorcycle No.MH-14-FZ-8661 vide Cr.No.0982/2023 for the offence punishable U/s.279, 337, 338 and 427 of Indian Penal Code read with Section 184, 119 and 177 of Motor Vehicles Act, 1988. The Police visited the spot of accident and prepared the Spot Panchanama in presence of panchaas namely, Rajendra Baburao Avnine and Swami Pandharinath Pinjan. The Discharge Summary of Ruby Hall Clinic Ex.22 discloses that the injured was treated in the said hospital from 21.08.2023 to 28.08.2023 for the injuries sustained in the accident.

21. On going through the evidence, documents filed on record and the submissions of applicant, it appears that the accident took place on 21.8.2023 Opposite Chandrana Hotel, Tal. Mulshi, Dist. Pune due to rash and negligent driving of the driver of the motorcycle No.MH-14-FZ-8661.

22. All these documents duly corroborate the

evidence adduced by the applicant to show that on 21.8.2023 due to involvement of motorcycle No.MH-14-FZ-8661, owned by the opposite party and driven by the driver, the applicant sustained serious injuries. Therefore, I answer Issue No.1 in the affirmative.

As to Issue No.2:-

23. According to the insurer, it is not liable to pay the compensation, as the the driver of the offending motorcycle No.MH-14-FZ-8661 was not holding valid and effective driving licence and therefore committed breach of terms and conditions of the Insurance policy.

24. It is the argument of the learned counsel for the Insurer that the insured has committed breach of terms and conditions of the policy and permitted his motorcycle to be driven by minor aged 17 years and 8 months. He argued that the Charge-sheet Ex.37 produced on record establishes that the rider of the insured motorcycle, Master Laxman Kumar Birja Roy, was 17 years and 8 months old on the date of accident. He also argued that in the present case the rider was legally incapable of obtaining any driving licence and the insured consciously entrusted the vehicle to a person whom the law itself prohibits from driving.

25. In support of the contention the learned counsel for the Insurer relied on following citation :

- **United India Insurance Co. Ltd. V/s. Rakesh Kumar Arora 2008 ACJ 2855 (SC)**

26. Per contra it is argued by the learned counsel for the applicant that the Insurance company has merely filed a chargesheet to show that the rider was 17 years and 8 months at the time of the accident. He also argued that the Insurer has not filed any birth proof of the rider of the motorcycle to show that the rider was minor at the time of the accident. He further argued that the copy of Juvenile Board filed by the Insurance Company clearly state that Police Machinery failed to secure the presence of the child and consequently the witness. He argued that the Insurer has failed to prove that there is a willful or deliberate breach by the Opposite party. He also argued that the chargesheet is not a substantive evidence and cannot by itself prove the age of the rider.

27. To prove its defence the Insurer has examined Nehal Suresh Sarkate (DW1) vide Ex.30. He deposed that he is working as Senior Associate with Go Digit General Insurance Co. Ltd in Claims Department. It is his evidence that the Policy No.D099297924/07042023 issued by their Company in favour of Yewale Suryakant in respect of vehicle No.MH-14-FZ-8661 which was valid from 08.04.2023 to 7.4.2024. He deposed that vide letter dated 16.6.2026 to Opposite party the Insurer have intimated about disowning their liability on account of breach of policy terms and conditions as rider of the insurer vehicle was minor and as such was not holding valid driving licence. He also deposed that the minor is not eligible to

possess a valid and effective driving licence.

28. He testified that as the driver of the said vehicle was minor and was not holding valid and effective driving license on alleged date of accident, therefore there is a fundamental and willful breach of terms and conditions of the policy. He filed and proved attested copy of Insurance policy along with the terms an conditions Ex.35, letter issued to Suryakant Yevale on 16.6.2026 along with the postal receipt and the tracking report Ex.36 and photocopy of charge sheet Ex.37.

29. He was cross examined from the side of the learned counsel for the applicant. He was confronted about the reason for sending the notice to the vehicle owner wherein he replied that the notice was sent when it came in the knowledge. He was also confronted as to whether the Insurance company applied for the certified copy of the charge sheet, filing the receipt to that effect and investigation done in the matter wherein he replied in affirmative. However replied that the Investigator in the present matter has applied for the charge sheet. He was further confronted about the reason as to why he has not filed the investigation report wherein he replied he can file it on the next date.

30. He admitted that in the terms and conditions of the policy there is avoidance clause and the insurance company has reserved the recovery right. He denied that

the driver of the offending vehicle was not minor at the time of the accident. However, volunteered that the charge-sheet is filed by the police. He further denied that there is no breach of policy condition, hence the insurance company is liable to pay the compensation.

31. The Insurer has taken a specific defence that at the time of the accident the offending vehicle was driven by minor aged about 17 year 8 months who was not legally competent to hold a valid driving licence and consequently there was breach of terms and conditions of the insurance policy. In support for the defence the insurer examined Nehal (DW1) who deposed regarding the age and status of the persons who was driving the offending vehicle No.MH-14-FZ-8661 at the relevant time of accident. His testimony is duly corroborated by the charge-sheet filed in respect of the accident, which is produced on record at Ex.37. The charge-sheet reflects that proceedings were initiated u/s.119/177, 33(1)181 and 5/180 of Motor Vehicles Act which offences relate inter alia, driving without a valid licence and permitting an unauthorized/unlicenced person to drive the vehicle. The material on record further shows that the person driving the vehicle was a minor aged about 17 years and 8 months on the date of accident.

32. It is pertinent to note that the evidence of Nehal (DW1) has not been satisfactorily shaken in the cross examination. There is no convincing material brought on record by the owner to establish that the driver was holding

a valid and effective driving licence on the date of the accident. On the contrary the contemporaneous police record which is the charge-sheet at Ex.37 lends corroboration to the testimony of Nehal (DW1) regarding the fact that the vehicle was being driven by a minor and that the statutory requirements relating to driving licences were not complied with. It is true that the charge-sheet by itself cannot be treated as conclusive proof of the facts stated therein. However, in the present case, the charge-sheet is not the sole piece of evidence relied upon by the insurer. It is supported by the oral testimony of Nehal (DW1) and other circumstances appearing on record. The combine effect of this evidence establishes on preponderance of probabilities that the offending vehicle was being driven by a minor (the child conflicting law) who was not holding a valid and effective driving licence. Thus, the insurer has successfully established that there is a breach of the statutory requirements as well as of the policy condition relating to driving of the insured vehicle by a duly licenced and authorized driver.

33. However, the said finding does not absolve the insurer from its statutory liability towards the third party claimant. The liability of the insurer towards the third party is to be determined in accordance with Section 149 of the Motor Vehicles Act and the principles laid down by the Hon'ble Supreme Court in **National Insurance Vs. Swaran Singh & Ors.** particularly, even where a breach of the policy condition relating to driving licence is proved, the insurer,

in an appropriate case may be directed to satisfy the award in the first instance and thereafter recover the amount from the owner of the offending vehicle.

34. In the present case considering the established fact that the offending vehicle was being driven by a minor aged about 17 year 8 months and that he was not holding a valid driving license, I hold that the insurer has proved the defence of breach of policy condition. Therefore, the Insurer is entitled to seek recovery rights against the owner of the offending vehicle No.MH-14-FZ-8661, subject to the facts and circumstances of the case and the applicable law. Therefore, I answer Issue No.2 in affirmative.

As to Issue No.3 and 4:

35. So far as disability and quantum of compensation is concerned, it is contended by applicant that he had sustained comminuted fracture right patella.

36. It is argued by the learned counsel for the applicant that the applicant has sustained serious injuries in the said accident. He further argued that the applicant was treated at Ruby Hall Clinic, Hinjewadi from 21.8.2023 to 28.8.2023 and operated on right leg with implants.

37. The learned counsel for the applicant argued that the applicant has sustained Comminuted fracture of right patella. He further argued that Dr. Naresh Khanna assessed the permanent partial disability of the applicant

to the extent of 58% and estimated Rs.60,000/- for removal of implant.

38. It is the argument of the learned counsel for the applicant that at the time of the accident the applicant was running business under the name and style “Shri Electronics & Appliances and he was paying Income Tax. He further argued that the applicant’s income for the Assessment Year 2022-23 to 2025-26 was Rs.7,26,510/-, Rs.5,31,550/-,Rs.11,24,154/-and Rs.1,49,920/ respectively.

39. The counsel for the applicant argued that the applicant suffered loss in the F.Y. 2024-25 as he could not attend his work for about a year so also at present he works only half a day and hence his income is halved.

40. It is the argument of the counsel for the applicant that the applicant had a personal mediclaim policy of HDFC Ergo vide Policy No.2814205363677700 and the mediclaim company paid Rs.1,48,326/- out of Rs.1,81,745/- to the hospital. It is also argued that the mediclaim letter Ex.23 clearly shows that the amount was paid by the mediclaim and balance paid by the applicant. It is further argued that the same be paid to the applicant.

41. It is his argument that the applicant spent Rs.1,81,745/- for hospitalisation and medicines, Rs.30,000/- towards special diet and conveyance. It is also argued that he sustained loss of income for 1 year to

the extent of Rs.10,00,000/-. The counsel for the applicant further argued that the applicant has claimed Rs.1,50,000/- for pain and suffering, Rs.50,000/- for loss of amenities of life, Rs.1,74,000/- for disability and Rs.50,000/- for future surgery/removal of implant.

42. Ganesh Shankarrao Shrimanwar (AW1) testified that after the accident he was treated at Ruby Hall Clinic, Hinjewadi from 21.8.2023 to 28.8.2023. He was operated on his right leg below knee. He deposed that he had taken OPD treatment in the same hospital.

43. It is his evidence that he had a personal mediclaim policy of HDFC Ergo vide Policy No.2814205363677700 and the mediclaim company paid Rs.1,48,326/- out of Rs.1,81,745/- to the hospital and the balance amount was paid by him.

44. He deposed that due to accident he sustained comminuted fracture of right patella. He further deposed that he spent Rs.20,000/- for special diet and Rs.10,000/- for conveyance.

45. He deposed that Dr. Naresh Khanna examined him and assessed his permanent partial disability to the extent of 58%. He also deposed that Dr. Khanna estimated expenses of Rs.60,000/- for implant removal.

46. It is his evidence that at the time of the

accident, he was running his own business under the name and style "Shri Electronics & Appliances and was paying income tax. He deposed that his income for the Financil Year 2021-22, 2022-23, 2023-24 and 2024-25 was Rs.7,26,510/-, Rs.5,31,550/-, Rs.11,24,154/- and Rs.1,49,920/-. He also deposed that he suffered loss in the Financial Year 2024-25 as he could not attend his work for about a year or so after the accident. It is his evidence that he work only half a day hence his income have halved. He filed and proved original discharge summary of Ruby Clinic Ex.22, Settlement Letter of HDFC Ergo Ex.23, Income Tax returns for the Assessment Year 2022-23, 2023-24, 2024-25, 2025-26 Ex.24 and registration certificate of Shree Electronics and appliances Ex.25.

47. He was cross examined at length by the learned counsel for the Insurer. He admitted that he has his business at Nanded. He was confronted about the nature of his firm wherein he replied it is a Proprietary firm. He denied that as on the date also his business is in running condition. He admitted that the Income Tax Returns filed by him prior to the date of accident so also after the accident are correct. He also admitted that after the accident as per the income tax returns filed by him, he sustained the loss to the tune of Rs.1,95,000/-p.a. He further admitted that after the accident his income from the business has increased to the tune of Rs.3 lakh approximately which is mentioned in the Income Tax returns.

48. He admitted that he did not file any medical document to show that due to the accident he sustained any loss in the business. He also admitted that in the accident two vehicles are involved. However, volunteered that he was driving his vehicle. He denied that he is also equally responsible for the alleged accident. He also denied that there was no fault on the part of the driver of the offending vehicle. He further denied that the false offence is registered against the offending vehicle. He denied that he did not sustain any accidental injury so also was never admitted and treated and further did not pay any amount towards medical expenses.

49. He denied that he did not spend Rs.20,000/- towards special diet, Rs.10,000/- for conveyance so also did not take any OPD treatment. He also denied that he is fit and fine and did not sustain any physical disability. He further denied that in order to get the higher compensation he has filed false disability certificate, affidavit and documents. He denied that he is not required to pay Rs.60,000/- towards future surgery.

50. To prove the disability the applicant examined Dr. Naresh Khanna (AW2) vide Exh.26. He deposed that he had examined the applicant on 20.1.2025 and have assessed the permanent partial disability to the extent of 58% wherein the applicant had narrated that the accident took place on 21.8.2023. He also deposed that the applicant had taken treatment at Ruby Hall Clinic from 21.8.2023 to

28.8.2023. He further deposed that after perusing the hospital papers brought by the applicant he noted Comminuted fracture of right patella (ORIF K Wiring and TB wiring & medial and lateral retinacular repair).

51. He deposed that on examining the applicant clinically and radiologically the applicant was having :

i) tenderness, deformity, scarring of right leg

ii) movements of right knee painful and restricted

iii) unable to do day to day activities, unable to work as before

iv) unable to squat, climb stairs, stand or walk for long

v) will require observation and physiotherapy, implant removal surgery.

52. He deposed that he assessed the permanent partial disability of the applicant to the extent of 58%. He also deposed that the unison of the bone doesn't mean that there is no disability. He further deposed that PPD means the difficulties or problems as mentioned above that continue even after the bone is united or healed. It is his evidence that the power doesn't remain the same after unison or healing of the bone. He deposed that the patient compulsorily needs to undergo implant removal surgery and estimated cost of Rs.60,000/- as mentioned in his certificate. He further deposed that the disabilities shall not decreased with passage of time or after physiotherapy or implant removal as they are permanent in nature. He

filed and proved disability certificate of the applicant Ex.27.

53. He was cross examined at length from the side of Insurer on the point of clinical examination of the applicant, issuance of disability certificate, assessment of partial permanent disability on higher side. However, he denied the adverse suggestions put forth to him in respect of issuance of false disablement certificate to the applicant.

54. He admitted that he has not treated the patient. He also admitted that he has not mentioned the formula for bifurcating the disability. He further admitted that he has not mentioned the book referred by him for assessment of disability. He denied that he has deviated the guidelines of Indian Medical Council while issuing the disability certificate. He also denied that the contents of disability certificate are merely the complaints of the patient not amounting to disability. He was confronted about the healing period for the injuries wherein he replied 8 months.

55. He admitted that the injured can perform his day-to-day activities. However, volunteered that with difficulties. He also admitted that the disability certificate is issued for the particular part and not concerning the whole body. He denied that the injured can do his day to day activities. He further denied that the patient did not suffer any disability and without examining the patient, in order to help him, he has issued the false disability

certificate.

56. On scanning of the oral as well as the documentary evidence, it can be seen that the accident took place on 21.8.2023 and the applicant was treated at Ruby Hall Clinic at Hinjewadi from 21.8.2023 to 28.8.2023.

57. In **Raj Kumar Vs Ajay Kumar [2011 ACJ 1 (SC)]**, the principle of assessment, determination of loss of future earning of the injured with reference to the extent of his permanent disablement, quantum and injury is discussed at length. However, the following are the principles which are enumerated as under :

"(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."

58. Moreover the partial permanent disability is also discussed in the said case wherein it refers to a person's inability to perform some of the duties and bodily functions that one could perform before the accident.

59. The 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 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.

60. The duty is cast upon the Tribunal to award just which means that compensation should to the extent possible fully adequately restored the claimant to the position prior to the accident. The object of awarding damages is to make good the loss suffered as a result of wrong done as far as money can do so, in a fair, reasonable and equitable manner. A Court or Tribunal have to assess the damages objectively and excludes from consideration any speculation or fancy though some conjectures with reference to the nature of disability and its consequences, is inevitable. A person is not only to be compensated for the physical injury but also for the loss which is suffered as a result of such injury. This means that he is to be compensated for his inability to lead a full life, his inability to enjoy those normal amenities which he would have enjoyed but for the injury and his inability to earn as much as he used to earn or could have earned.

61. The Tribunal should not be a silent spectator

when medical evidence is tendered in regard to the injuries and their effect, in particularly, the extent of disability. However, section 168 and 169 of the Motor Vehicles Act make it evident that a Tribunal does not function as a neutral empire 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'. 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.

62. Here in the present matter, the applicant has

examined Dr. Naresh Khanna (AW2) for proving the disablement certificate which is issued by him vide Exh.27. However, on scanning of the oral evidence adduced by Dr. Khanna (AW2), it can be seen that on 20.1.2025, he had examined the applicant and have assessed the permanent partial disability to the extent of 58% on the basis of history narrated by the applicant. His evidence is very clear on the point of treatment of applicant who had taken treatment at Ruby Hall Clinic at Hinjewadi from 21.8.2023 to 28.8.2023.

63. There is no iota of evidence which leads to show or from where, an inference can be drawn that the said doctor had any occasion to treat the applicant for the injuries which is alleged to have been sustained due to the said vehicular accident. In absence of any evidence to the effect of the treatment, it would be difficult to believe and consider the assessment to the tune of 58% permanent partial disability assessed by Dr. Khanna (AW2).

64. Furthermore, mere production of a disability certificate issued by a doctor who is a private practitioner cannot be considered as proof to the extent of disability stated therein unless, the doctor who treated the applicant who medically examined and assessed the extent of disability of the applicant is tendered for cross examination with reference to the certificate. Moreover, the original Discharge summary of Ruby Clinic which are filed and proved by the applicant vide Exh.22 discloses only about

the history, diagnosis and operative details wherein there is no mention about any disablement or likelihood of any disablement in future because of the injuries sustained by the applicant in the accident.

65. In absence of any evidence in respect of the any likelihood of disablement in future the testimony of Dr. Khanna (AW2) cannot be considered as it lacks credence. Therefore, it can not be considered that the applicant has sustained permanent partial disablement which has been assessed by Dr. Khanna (AW2) to the extent of 58%.

66. The applicant has claimed Rs.1,81,745/- towards medical expenses, Rs.30,000/- towards special diet and conveyance, Rs.10,00,000/- for loss of income for 1 year, Rs.1,50,000/- for pain and suffering, Rs.50,000/- for loss of amenities of life, Rs.1,74,000/- for disability and Rs.50,000/- for future surgery implant removal.

67. It is to mention that if the disablement certificate is not proved in the Motor Accident Claim Petition or similar injury compensation case, it significantly impact the computation of compensation, especially under the head of 'disability'. However, without a valid, proved disablement certificate (usually issued by a competent medical board), the Court can not assume or rely on any claimed percentage of disability. Moreover, the Court can still award compensation, but it must be based on actual,

proven damages such as medical expenses, pain and suffering, loss of income during treatment, loss of amenities, conveyance, special diet and future treatment.

68. Furthermore, in absence of proved disablement certificate based on the overall facts and circumstances of the case, the Tribunal can award lump sum compensation.

69. Here in the present matter, the applicant could not demonstrate or prove the exact disability percentage, the injuries, though not certified as permanent, the pain, suffering and the hardship and there is a lack of precise evidence to apply the multiplier method, but the injury is still significant, therefore, considering the nature of injuries sustained by the applicant, in my opinion, the applicant is entitled for lump sum compensation which is reasonable, fair and just.

70. Considering the nature of injuries, diagnosis, pain, trauma and period of treatment, the claimant is awarded **Rs.1,00,000/-** towards pain and suffering.

71. The applicant is entitled for total medical expenses of **Rs.1,81,745/-** proved vide **Ex.23**.

72. Further, the claimant would have incurred expenses towards conveyance and special diet during the course of treatment and recovery. Therefore, an amount of **Rs.15,000/-** towards special diet and **Rs.15,000/-** towards conveyance.

73. In addition to this, the applicant is also entitled for **Rs.1,00,000/-** towards loss of functional disability and **Rs.1,00,000/-** towards loss of amenities of life.

74. The applicant has claimed Rs.10,00,000/- compensation towards loss of income on account of the injuries sustained in the accident. However, the evidence on record does not establish that the income of the applicant was reduced on account of the accidental injuries. On the contrary, the documentary evidence produced by the applicant himself demonstrates that his income has substantially increased after the accident.

75. It is pertinent to note that the accident occurred on 21.8.2023. The applicant has produced his income tax return on record vide Ex.24. As per the said returns the income of the applicant for the Assessment Year corresponding to the Financial year is as follows :

Financial Year	Income
2022-23	Rs.7,26,510/-
2023-24	Rs.5,31,550/
2024-25	Rs.11,24,154/-
2025-26	Rs.1,47,920/-

76. It is significant that the applicant himself has admitted in his cross examination that the income has increased after the accident. The income tax returns

produced by him lend support to this admission. Though the income for the Financial Year 2023-24 is lower than that of the preceding year, the income for the subsequent financial year 2024-25 is Rs.11,24,154/- which is substantially higher than the income of Rs.5,31,550/- shown for the financial year 2023-24. Thus, after the accident dated 21.8.2023, the applicant's income has not shown a continuing or permanent decline rather, the record demonstrates a substantial increase in his income in the subsequent financial year.

77. The difference between the income shown for the year 2023-24 and 2024-25 is approximately Rs.5.92 lakhs and not merely an insignificant variation. These documentary evidence is particularly relevant because the applicant has himself admitted that his income increased after the accident. There is no satisfactory evidence on record to establish that, notwithstanding such increase in actual income, the applicant suffered any permanent diminution in his earning capacity attributable to the accidental injuries.

78. It is to mention that the compensation for loss of future earning capacity cannot be awarded merely because the applicant sustained injuries. There must be cogent evidence establishing that the injuries resulted in a permanent functional disability affecting his capacity to earn. In the present case the applicant's own income-tax record demonstrates that his earning capacity, infact, has

not been adversely affected in the manner alleged. The subsequent substantial increase in income is inconsistent with the contention that the applicant suffered a permanent loss of earning capacity.

79. It is pertinent to note that the income tax return for the financial year 2025-26 reflects income of Rs.1,47,920/-. However, this subsequent reduction by itself, cannot be attributed to the accident in absence of cogent evidence connecting the reduction in income with the injuries sustained in the accident. The applicant, Ganesh (AW1) has admitted that his income had increased after the accident, and there is no reliable evidence demonstrating that the injuries were responsible for the subsequent variation in income. Therefore, on an overall appreciation of oral and documentary evidence particularly the admission of the applicant in cross-examination and the income tax return Ex.24, I find that the applicant has failed to prove that he suffered any permanent loss of income or earning capacity due to the injuries sustained in the accident. Consequently, no compensation can be awarded under the head of loss of income.

80. Thus, the applicant is entitled for total compensation of **Rs.5,11,745/-** which is just, fair and reasonable.

81. I have gone through the ruling cited and relied upon by the learned counsel for the applicant and the

Insurer. They are not helpful to the present case as the facts and circumstances of the cases cited supra are different than the case in hand.

82. It is already held that the offending vehicle was being driven by a minor aged about 17 year 8 months and that he was not holding a valid driving license and the Insurer has proved the defence of breach of policy condition. However, the copy of Insurance Policy produced on record vide Ex.20 shows that the offending vehicle was validly insured with the Insurer. Therefore, the Insurer is liable to pay first the compensation amount to the applicant and then recover it from the Opposite party.

83. The applicant has claimed interest @ 9% per annum. The claim being in petition under Motor Vehicles Act, the interest can be granted on compensation amount. It is the general principle that in the petition under Motor Vehicles Act, the interest should be granted equal to the rate of interest on fixed deposits of nationalized banks. As the Tribunal has to assess just and fair compensation, therefore, I think it proper to grant interest @ 7.5% per annum on the amount of compensation. Therefore, in my opinion, the interest @ 7.5% p.a. should be granted on compensation amount from the date of petition. Hence I answer Issue No.3 accordingly and proceed to pass following order :

-:<u>ORDER</u> :-

1. The petition is hereby allowed with costs against the opposite party and the Insurer as under :-

2. The opposite party and the insurer, subject to the direction given in clause 3-A to 3-C, do pay **Rs.5,11,745/- (Rupees Five Lakhs Eleven Thousand Seven Hundred Forty Five only)**, jointly or severally to the applicant with interest @ 7.5% p.a. from the date of application till realization thereof.

3. Amount of Rs.25,000/-, if any, granted towards no fault liability to the applicant shall be adjusted from the above said amount of compensation.

3-A. The Insurer shall deposit the amount of **Rs.5,11,745/-** payable to the applicant, **directly** in the account of the applicant and recover it from the Opposite party without filing a separate suit by initiating a proceedings before the executing court as if the dispute between Opposite party and insurer was the subject matter before this Tribunal and the issue was decided against opposite party and in favour of the Insurer.

3-B Before release of the amount to the applicant, a notice shall be issued to the opposite party and he shall be required to furnish security for the entire amount which the Insurer would pay to the petitioner.

3-C. In case there is default on the part of Opposite party in paying the amount awarded to the applicant, the same shall be recovered by disposing of the securities furnished by him or from any other property or properties of opposite party.

4. The Opposite party and Insurer are directed to deposit the entire amount directly in the account of the applicant given below :

Sr. No.	Name of the applicant	Account No.	Bank Name and IFSC
1.	Ganesh Shankarrao Shrimanwar	32972554966	State Bank of India SBIN0005935

by NEFT/RTGS and submit the compliance report of the same to the official email address of this Tribunal.

5. The applicant is hereby directed to deposit deficit court fees if any within 15 days from the date of award.

6. Award be drawn up accordingly.

MONICA INOK ARLAND
Digitally signed by MONICA INOK ARLAND
Date: 2026.08.19 17:23:56 +0530

[M. I. Arland]
CHAIRMAN
MACT, Mumbai

Date: 19/08/2026
*sb