HIGH COURT FORM NO. (J) 2.

HEADING OF JUDGMENT IN ORIGINAL SUIT/CASE
District : South 24 Parganas, Sub-Dvn.- Diamond Harbour

In the Court of the Additional District Judge, FTC-III, Diamond Harbour, South 24 Parganas

Present : Sachindra Mohan Bhowmick (WB01078)
Judge, M.A.C. Tribunal,
Addl. District Judge, FTC - III
Diamond Harbour, South 24 Parganas

M.A.C. Case No. - 39 of 2021
(CNR No. WBSP 1000-0464-2021)
(Application u/s 166 of the M.V. Act)
Date of Judgment : **17.07.2026**

Abdul Halim Sk

……. Claimant

Vs.

1. Kandan Chandra Naskar
2. The National Insurance Co. Ltd.

……...Opposite Parties

In the presence of

Mr. Sabir Hossain Daptary (Ld. Advocate for claimant) and
Mr. Susanta Dhara (Ld. Advocate for O.P No. 2)

and having stood for consideration to this day, the court delivered the following judgment-

This is a case under section 166 of the Motor Vehicles Act (hereinafter referred to as the 'M.V. Act' for short). In this case, the petitioner has prayed for grant of compensation to the tune of Rs. 30,00,000/- for his disablement and becoming unemployed in a road traffic accident.

FACTUAL MATRIX OF THE CASE

1. The case of the petitioner as depicted in his claim application is as follows:

On 09.02.2021 at about 6:00 AM to 6:30 AM the offending vehicle being a Bus bearing registration no. WB 19G 8152 was proceeding towards Sarisha from Bhadura at a very high speed and when it reached the Mistry para area, the said vehicle dashed the petitioner and one Hafijul Rahaman Jamadar from behind while being driven in a rash and negligent manner. The petitioner, a pedestrian, sustained multiple fracture injuries on his person and his right hand (upper limb) was amputated on the spot and his right leg was severely fractures as a result of the accident. Further case of the claimant is that local persons rescued him from the spot and shifted him to Diamond Harbour Hospital where the treating doctor transferred him to CNMC or SSKM Hospital. The victim/claimant was finally admitted at SSKM hospital and he underwent treatment there. The post mortem of the amputated right arm of the victim was conducted by the doctor at SSKM Hospital. Further case of the claimant is that prior to such accident he was an employee of Rajibul Garments under the proprietorship of Hafijul Rahaman Jamadar as a skilled tailoring master and used to earn monthly salary of Rs. 15,000/- from such employment but the accident left him permanently disabled and unemployed.

2. It is claimed by the applicant that the accident happened solely due to rash and negligent driving of the offending vehicle and resulted in his permanent disablement. Further case of the petitioner is that over that incident one Parulia Coastal P.S. Case No. 09 of 2021 dated 10.02.2021 was registered u/s 279/338/427 of the I.P.C against the driver of the offending vehicle. It was further claimed that the registered owner of the said offending vehicle was one Kandan Chandra Naskar and he was arrayed as O.P No 1 of this case. The Insurance Policy No. of the offending vehicle was mentioned as 154400312010001324 which was valid from

22.09.2020 to 21.09.2021. The Court fees of Rs 30/- was paid at the time of filing the application with leave to pay the rest at the appropriate stage.

3. It is further claimed that due to such pathetic accident, the petitioner has become permanently disabled and was put to great hardship for the loss of income. On the aforesaid premises, the petitioner has prayed for compensation to the tune of Rs. 30,000,00.00 plus cost and interest. The petitioner also sought for just compensation for his pain and sufferings, expenses incurred for his medical treatment, future prospect and other losses.

4. After service of summons of this case, the owner of the offending vehicle was served with notice of the case but he did not make his appearance before the court by filing vokalatnama and the case runs ex parte against him. Whereas the OP no.2 being the Insurance Company filed the written statement and contested the suit till completion of proceeding.

THE CASE OF THE OP NO.2

5. The National Insurance Co. Ltd being the OP no.2 contested the case by filing written statement whereby and wherein it denied all the material averments made in the claim petition. It is claimed that the application for compensation is neither maintainable in law nor in facts. It is further contended that the present Tribunal has no territorial jurisdiction to try and dispose of this claim petition. The identity, age, occupation and the income of the victim are specifically denied by the OP no.2. The alleged involvement of the offending vehicle in the accident and the causation of injury to the victim as the result of the accident are categorically denied by the contesting OP rather it was the result of negligence on the part of the petitioner himself. In the written statement the OP no.2 further denied that the offending vehicle was under any valid insurance policy issued by it at the relevant point. Further, it was categorically mentioned that the amount of compensation claimed by the petitioner on different heads is without any basis and the claimant should prove his contentions in this proceeding. On the aforesaid contentions, it is prayed that the present claim case is not maintainable and the insurance company cannot be held liable to pay for any compensation.

6. On the basis of pleadings of the parties, following issues have been framed for consideration on recast at the time of preparation of judgment.

ISSUES

1. Is the claim petition maintainable in its present form and in law?
2. Whether the claimant has any valid and legal cause of action to bring this case against Opposite parties ?
3. Was there an accident resulting in injury to the claimant ?
4. Was there any rash and negligent driving by the driver of the offending vehicle bearing no. WB 19G 8152 which caused the accident ?
5. Weather the offending vehicle was under valid insurance coverage at the time of accident?
6. Is the petitioner entitled to get any compensation? If so, to what extent?
7. To what other relief or reliefs, if any, is the petitioner entitled ?

TRIAL

7. During the course of trial, from the end of the petitioner/claimant, the following witnesses were examined.

Abdul Halim Sk, the claimant	PW-1
Mizanur Rahaman Molla	PW-2
Sarabindu Kabi	PW-3
Dr. Sambit Acharya	PW-4
Biswanath Roy	PW-5
Sudip Das	PW-6

Whereas the contesting OP no.2 did not examine any witness in support of his case.

So far documentary evidence is concerned, from the end of the petitioner, the following documents were adduced in evidence and marked as exhibits:

The certified copies of formal FIR, written complaint, charge sheet and seizure list	Exhibit-1 series
The true copy of registration certificate of the vehicle	Exhibit-2
The true copy of fitness certificate	Exhibit-3

The true copy of insurance policy	Exhibit-4
Referral Card	Exhibit-5
Application for correction of name in referral card	Exhibit-6 (w/o)
Emergency ticket of National Medical College and Hospital in the name of Abdul Halder	Exhibit-7
Injury report in the name of Abdul Halim Sk	Exhibit-8
Original discharge certificate and treatment sheets	Exhibit-9
Attested copy of Aadhar card of victim	Exhibit-10
Attested copy of birth certificate of victim	Exhibit-11
Original Income certificate of victim	Exhibit-12(w/o)
Original Disability Certificate	Exhibit-13 (w/o)
Medical bills in original	Exhibit-14

From the end of the OP no.2, no documentary evidence was placed on record in the course of trial.

8. Subsequently, the argument was heard from the Ld. Counsels representing both the petitioner and the OP no.2. However, both the parties filed their written notes of their argument before the court. On closure of argument, the case is now coming up for passing of judgment.

DECISION WITH REASONS

ISSUE NOS. 1 & 2:

9. Both the aforesaid two issues are taken up in togetherness for discussion as those are interlinked and the for the sake of brevity in discussion. In the instant case, the application for compensation was filed under section 166 of Motor Vehicle Act. I think, for better understanding of the above mentioned two issues, the provision is required to be reproduced hereunder:

The section 166 of Motor Vehicle Act provides that-

1) An application for compensation arising out of an accident of the nature specified in sub-section (1) of section 165 may be made-

(a) by the person who has sustained the injury; or

(b) by the owner of the property; or

(c) where death has resulted from the accident, by all or any of the legal representatives of the deceased; or

(d) by any agent duly authorised by the person injured or all or any of the legal representatives of the deceased, as the case may be:

Provided that where all the legal representatives of the deceased have not joined in any such application for compensation, the application shall be made on behalf of or for the benefit of all the legal representatives of the deceased and the legal representatives who have not so joined, shall be impleaded as respondents to the application.

[Provided further that where a person accepts compensation under section 164 in accordance with the procedure provided under section 149, his claims petition before the Claims Tribunal shall lapse.]

[(2) Every application under sub-section (1) shall be made, at the option of the claimant, either to the Claims Tribunal having jurisdiction over the area in which the accident occurred or to the Claims Tribunal within the local limits of whose jurisdiction the claimant resides or carries on business or within the local limits of whose jurisdiction the defendant resides, and shall be in such form and contain such particulars as may be prescribed:

[* * * * *]

[(3) No application for compensation shall be entertained unless it is made within six months of the occurrence of the accident.]

[(4) The Claims Tribunal shall treat any report of accidents forwarded to it under [section 159] as an application for compensation under this Act.]

[(5) Notwithstanding anything in this Act or any other law for the time being in force, the right of a person to claim compensation for injury in an accident shall, upon the death of the person injured, survive to his legal representatives, irrespective of whether the cause of death is relatable to or had any nexus with the injury or not.]

10. The aforesaid provision makes it abundantly clear as to who are the person/persons eligible to bring out the application seeking compensation and which claim tribunal exercises the jurisdiction to entertain the said application. The section clearly suggests that such an application arising out of an accident of the

nature specified in sub-section (1) of section 165 may be made by the person who sustained the injury or where the death is caused by the accident, by all or any of the legal representatives of the deceased or by any agent duly authorized by the person injured or all or any of the legal representatives of the deceased.

11. In the present case, the application has been brought forth by the petitioner claiming himself to be the victim of road traffic accident alleged to have taken place on 09.02.2021 at about 6:00 AM/ 6:30 AM when he was moving along the road at Mistry Para area. In that way, I find that there is no impediment in bringing the aforesaid application by the claimant/petitioner himself. In the filed written statement, the insurance company, the OP no. 2 herein challenged the identity of the petitioner and contended that the petitioner did not suffer the alleged accident on 09.02.2021 at the given time due to rash and negligent driving of the offending vehicle. In the written notes of argument, the OP no.2 contended that the petitioner has filed a false claim on the basis of fabricated and manufactured documents. It has been contended further that the name of the victim in the medical documents submitted before the court has been changed from one Abdul Halder to Abdul Halim Sk and there is also discrepancy in the documents as to the upper arm of the victim that was amputated in the alleged accident. He argued that the medical documents have been procured by the applicant only for the purpose of this case. To refute such argument, it is submitted by the Ld. Counsel for the petitioner that it was the petitioner Abdul Halim Sk who suffered such a serious road accident in which his right arm was completely amputated. He contends that the mistake in mentioning the name of the petitioner as Abdul Halder at some initial medical documents might have occurred due to inadvertence when everyone was in hurry to get the victim admitted in hospital in seriously injured condition and after the mistake was detected, the same has been corrected by the hospital authority on an application being filed by the relative of the petitioner. Ld. Counsel would further submit that the medical documents admitted in evidence and the evidence adduced by the staff of the concerned hospital in proof of those documents have cleared every doubt regarding the identity of the petitioner as the victim of road traffic accident and the pleas taken by the OP no.2 are all false, concocted and imaginary and put forward only to avoid the legal obligation to compensate the victim of the case.

12. With a view to ascertain if there was any ambiguity with regard to the identity of the petitioner as the victim of alleged accident, this Tribunal intends to examine the documents on record and the evidence adduced in this case by the petitioner. At this stage, it is pertinent to mention that apart from denying and disputing the identity of the petitioner, the OP no.2 did not put in place any positive assertion in this regard either in the filed written statement or in the course of cross-examination of the prosecution witnesses. The analysis of documents, collectively marked as Exhibit-1 series would make it clear that after the alleged accident and on the basis of written complaint filed by one Momin Molla, Parulia Coastal PS no. 09/21 dated 10.02.2021 was registered by the police under section 279/338/427 IPC and the investigation was culminated in the submission of charge sheet against the driver of the offending vehicle. During investigation, the concerned police authority had verified the identity of the victim of the alleged accident and in the charge sheet, the name of the petitioner, Abdul Halim Sk, S/o – Saifuddin Sk of Patdaha, PS- Parulia Coastal, Dist- South 24 Parganas has clearly been specified as the victim of the accident. In fact, there was overwriting of the name of the patient in the original referral card (marked as Exhibit-5), but the petitioner has satisfied that the necessary correction was carried out by the Medical Officer, Diamond Harbour Hospital on an application made in this regard by the uncle of the petitioner, Ejajul Gazi. The original of the said application has been adduced in evidence by the petitioner and marked as Exhibit-6 bears the documentary proof of the same. Moreover, the petitioner examined the medical staff of both SSKM Hospital, Kolkata and Diamond Harbour Medical College and Hospital as PW-5 and PW-6 respectively who produced attested copies of treatment related documents of Abdul Halim Sk, the petitioner and the true copies of OPD Register and Emergency Admission Register, marked herein as Exhibit-17 and Exhibit-18 respectively and the documents go to suggest that it was the petitioner, Abdul Halim Sk who was initially admitted at Diamond Harbour Hospital on 09.02.2021 after having sustained severe injury in the road traffic accident but subsequently referred to CNMCH. However, the petitioner got admitted at SSKM Hospital, Kolkata and underwent medical treatment there for several months on three consecutive occasions. In addition to that, the petitioner was examined by the medical board of Diamond Harbour Hospital and on assessment of his disability, necessary disability certificate was issued in his name by the medical board. The petitioner examined one of the members of that medical board namely Dr. Sambit Acharya as PW-4 to prove that disability certificate issued in his name. Examining all these

documents and on consideration of evidence adduced by the aforementioned witnesses, this tribunal has no manner of doubt in its mind about the identity of the present petitioner and his capacity to file the instant claim application before this tribunal. The objection raised by the OP no.2 questioning the identity of the petitioner is primarily based on surmise and conjecture having no legal proof behind the same and thus stands overruled.

13. The application seeking compensation appears to have been made in proper form delineating all the required particulars specified therein. The road traffic accident alleged to have taken place at Mistry Para under the jurisdiction of Parulia Coastal PS. The claimant has his residence at Village- Patdaha, under PS Parulia Coastal. On perusal of the certified copies of the formal FIR, written complaint as well as the charge sheet (marked herein as Exhibit -1 series) it is explicit that the road traffic accident occurred on 09.02.2021 at about 6:00 hrs to 6:30 hrs when the offending vehicle bearing registration no. WB19G 8152 headed for Sarisha dashed the victim and another from behind. The charge sheet further suggests that after investigation, the police authority found that the said accident was the result of rash and negligent driving of the driver of the offending vehicle namely Rajjak Sk.

14. Therefore, in the light of above discussion, this Tribunal finds that this case under section 166 of the M.V. Act is well maintainable and the claimant has the valid cause of action for filing this case.

ISSUE NOS. 3 & 4:

15. Both the aforesaid issues are now taken up together for discussion for the sake of brevity and to avoid repetition. The scrutiny of the case record reveals that the claimant has submitted his written examination-in-chief on affidavit and adduced several documents in evidence to substantiate his claim in the instant case. The documents have been marked as exhibits in usual course of the trial. In his written examination-in-chief on affidavit the petitioner narrated the alleged accident leading to his sustaining injury almost in the tune of his claim application. He further stated in his affidavit-in-chief that the offending vehicle bearing no. WB19G 8152 which was coming at a very high speed and being driven in a rash and negligent manner by its driver dashed him from behind and as a result his right upper arm was amputated on the spot and he sustained severe bleeding and

fracture injury on both legs and with the help of local people he was shifted to Diamond Harbour Hospital. The witness being examined as PW-1 had further disclosed that he was transferred to Calcutta National Medical College and Hospital but his well wishers got him admitted at SSKM Hospital, Kolkata where he was treated as indoor patient. The witness further deposed that as a result of the accident he became physically handicapped and his movement has been restricted. The witness claims to have suffered permanent disablement to the extent of 90 % and to have lost his complete earning capacity. The witness stood firmly in the cross-examination with regard to the manner of accident.

16. In connection with the alleged accident and truthfulness of the same, when I looked into the exhibited documents, it becomes evident that following the incident, Parulia Coastal PS case no. 09 of 2021 dated 10.02.2021 was registered at the PS and the investigation was proceeded under section 279/338/427 of IPC against the driver of the offending vehicle (WB19G 8152). In course of investigation, the police effected seizure of offending vehicle (bus) and the driving license of offending driver . The copy of the charge sheet along with the other exhibits of the same series clearly show that there was a *prima facie* case made out against the driver of the offending vehicle Rajjak Sk as a result of the investigation.

17. The petitioner got one independent witness examined as PW-2 who in his affidavit-in-chief stated that he was an eye witness of the alleged accident and at the relevant point of time he was standing by the side of the road in front of tea stall at Mistry Para area. He further disclosed the manner as to how the accident took place at the given date and time. The witness had also confirmed the registration number of the offending vehicle and stated that the accident was caused mainly due to rash and rough driving of the said vehicle. On being cross-examined, he reaffirmed that he was present at the place of occurrence at the relevant time and had seen the accident to happen. In answer to suggestion put to witness if lock-down was being observed on 09.02.2021 due to Covid-19, he made it clear that there were vehicles over the road at that time, though few in numbers. He also asserted that he took the victims to the hospital in an auto at about 7 AM. The cross-examination of the witness by the Insurance Company, the OP no. 2 herein has failed to make out a case contrary to what has been delineated by the petitioner and the independent witness with respect to the alleged accident or to even shake the trustworthiness of the evidence adduced.

18. The proof of negligence is the *sine qua non* for an application to succeed under section 166 of the Motor Vehicles Act 1988 but it is also true that a compensation proceeding under the Act is neither governed by the criminal procedure nor it is like a classic civil suit. The Hon'ble Supreme Court in **Bimala Devi and Ors Vs Himachal Road Transport Corporation and Ors, (2009) 13 SC 530** was pleased to observe that -

"15. In a situation of this nature the Tribunal has rightly taken a holistic view of the matter. It is necessary to be borne in mind that strict proof of any accident caused by a particular bus in a particular manner may not be possible to be done by the claimants. The claimants were merely to establish their case on the touchstone of the preponderance of probability. The standard of proof beyond reasonable doubt could not have been applied."

19. Thus, keeping in view the testimonies of both PW-1 and PW-2 coupled with the exhibited documents and settled proposition of law in this regard, this Tribunal has no manner of doubt in holding that a road traffic accident had taken place on 09.02.2021 at about 6:00 AM to 6:30 AM over the road at Mistry Para area under Parulia Coastal PS in which the claimant was dashed by the offending vehicle from behind and the accident was attributed to rash and negligent driving of the driver of the offending vehicle. Thus, both the aforesaid two issues are decided in the affirmative and in favour of the claimant.

ISSUE NO. 5 :

20. The present issue concerns the question whether the offending vehicle bearing registration no. WB19G 8152 was covered under any valid insurance policy of the OP no. 2 at the relevant point of time of alleged accident. In order to prove this point, the petitioner/claimant has submitted several documents including the certified copy of of insurance policy of the offending vehicle which was marked in evidence as Exhibit-4. The same reveals that that Policy No. 154400312010001324 which stands in the name of insured, Kandan Chandra Naskar issued by the National Insurance Co. Ltd, the OP no.2 herein against the offending vehicle. The said document further goes to show that the policy was valid for the period from 22.09.2020 to 21.09.2021 (midnight). The petitioner arrayed the owner of the vehicle namely Kandan Chandra Naskar as the OP no.1 in this case.

21. Therefore, on careful scrutiny of the aforementioned exhibited documents, it is clearly established that the offending vehicle vide registration no. WB19G 8152 **was under coverage of a valid insurance policy of OP no.2 on the date of alleged accident** occurred on 09.02.2021. There remains no discrepancies in this regard. The present issue is accordingly decided in the affirmative and in favour of the claimant/petitioner.

ISSUE NOS 6 & 7:

22. The discussion of this Tribunal on the aforementioned issues leaves no manner of doubt that the claimant in this case has been able to make out a case for himself for entitlement of award of compensation but what should be the quantum of said compensation is the moot point for discussion of the present issue.

23. Now, in his application, the claimant claims himself to be of 21 years of age and in support of proof of age he brought forth the true copy of his Birth Certificate issued by Kamarpole Gram Panchayat being marked as Exhibit-11 in this case. The same reveals the date of birth of the claimant as 25.07.1999. Thus, on the date of alleged accident i.e. on 09.02.2021, the claimant was more than 20 years and comes under the bracket of 21-25 years. Therefore, 18 shall be taken as multiplier for computation of just compensation in view of table in case of **Sarla Verma (Smt.) & Ors. - Vs – Delhi Transport Corporation & Anr. (2009) 6 S.C.C.121.**

24. The next point for determination is what is the actual income of the victim. In his claim application and examination-in-chief on affidavit, the petitioner claims that prior to the accident he was engaged as a skilled tailor master at "Rajibul Garments" under the proprietorship of Hafijul Rahaman Jamadar and he used to earn Rs. 15000/- per month as salary from the job. Though the petitioner adduced in evidence one document certifying his monthly income by his employer in the form of Exhibit-12, but made no effort to prove the same in evidence by calling his employer in the witness box. No other witness was examined by the petitioner who could throw any light in this regard. In absence of any cogent proof with regard to the income of the petitioner at the time of accident, this court in not inclined to accept the statement of the claimant as sacrosanct so far his monthly income is concerned. Therefore, it can be said that the claimant has failed to prove his income

at the relevant point of alleged accident. The minimum wage notification serves as a guiding factor or a yardstick in specific situations to ensure a just and fair compensation is calculated when actual income proof is absent or unreliable.

25. From the notifications issued from time to time by the Govt. of West Bengal under the Minimum Wages Act and particularly the Notification issued for the period from 1st day January, 2021 to 30th June, 2021, this Tribunal finds that for a semi skilled worker in the employment of Tailoring Industry in the State of West Bengal, the monthly minimum wages for Zone B areas was Rs. 8,458/-. In the scenario, for the present claim application the notional monthly income of the claimant is to be considered as Rs. 8,458/-. Thus in this case, the amount of the yearly earning of the victim should be considered as Rs 1,01,496/-.

26. To determine the multiplicand and the multiplier in this case, and also to determine the extent of the disability, I have perused the evidences of the PWs particularly that of PW3 and PW-4 along with the claim application. Now, what is the extent of permanent disability suffered by the claimant in this case, is the next question. To substantiate the nature of injury sustained by him as a result of alleged accident, the petitioner produced several medical documents relating to his treatment in hospital as well as the disability certificate issued by the Superintendent, Diamond Harbour District Hospital and it is clear that the claimant was diagnosed with “Right Upper Limb Shoulder Amputation with Right Lower Limb Stiff Post Traumatic”. The disability certificate, herein marked as Exhibit- 13 appears to have been issued by authority of Diamond Harbour District Hospital in the name of the claimant. The extent of permanent physical impairment was mentioned as 90% (Locomotors disability). The petitioner examined one of the doctors of the medical board to prove that disability certificate as PW-4 in this case. Said PW-4 has clearly stated in his evidence that he was a member of the medical board which was consisted of three members including him and Dr. Sanat Kr. Jatua and the MSVP, Diamond Harbour Hospital. He further disclosed that the medical board examined one Abdul Halim Sk on 27.03.2024 and the locomotor disability of the patient was assessed as 90%. He further clarified that the patient suffered right upper limb shoulder amputation and right lower limb stiff post traumatic. He opined that the right upper limb shoulder amputation is permanent in nature. Furthermore, the PW-3 being one of the LDC staff attached to Diamond Harbour Hospital produced the attested copy of the report of the Disability Board dated

27.03.2024, countersigned by MSVP, Diamond Harbour Medical College and Hospital and the same was admitted in evidence as Exhibit-15 and the document only fortifies the genuineness of disability certificate issued in favour of the claimant. The cross-examination of the aforementioned two witnesses by the Ld. Counsel for the OP no. 2 did not yield anything adverse to question the genuineness and veracity of the disability certificate. The Ld. Counsel representing the claimant argued that considering the nature of injury sustained by the victim which makes him permanently disabled, his functional disability may be assessed as 100%. In this regard, he relied upon the decision of the Hon'ble Apex Court in the case of **M. Paramesh vs VRL Logistic Ltd. And Another** reported in 2026 INSC 655. In the above referred decision, Hon'ble Court was pleased to hold that the functional disability of a physical laborer (such as a mason) whose right leg was amputated should be assessed at 100%, overturning the tribunal's 70% physical disability assessment, and accordingly enhanced the compensation. In the instant case, as the materials on record would suggest, that the right upper limb (right hand) was completely amputated from shoulder due to alleged accident. Apart from that he had suffered serious fracture injury on his right leg also and had to undergo intensive medical treatment in several hospitals for long. He has testified that immediately prior to the accident he was working as a master tailor in a garments making concern. There is no dispute that such a fatal accident had made him completely incapable of pursuing the nature of job of a master tailor that he used to do. In fact, with his right hand completely amputated, the claimant has lost his complete earning capacity. The amputation has made him incapable of effectively carrying on any manual and physical work from which he could earn his means of sustenance. In the above circumstances and based on the above referred decision of the Hon'ble Apex Court, this tribunal is inclined to assess the functional disability suffered by the claimant to the extent of 100% to meet the ends of justice.

27. It goes without saying that victim suffered serious injury as a result of the accident and had to sustain prolong medical treatment. Though several medical bills and vouchers have been produced in course of trial as proof of expenditure by the claimant but no such document was proved in evidence and therefore no additional compensation for medical cost should be awarded to the claimant in this case.

28. Next comes the question of future prospects. In **National Insurance Company Vs. Pranay Sethi and Ors. 2017 AIR SC 4973**, the Hon'ble Apex Court has issued guidelines towards future prospect where the deceased had a permanent job or he was self employed or on fixed salary. The same principle applies equally to the cases where the victims suffered permanent disability caused in a motor accident. In this context, it would be apposite to refer to the case of Hon'ble Apex Court in **Pappu Deo Yadav Vs Naresh Kumar & Ors. 2020 SCC Online SC 752** wherein it was held that in cases of permanent disablement incurred as a result of a motor accident, the claimant can seek, apart from compensation for future loss of income, amounts for future prospects too. The Hon'ble Court was of the opinion that there is no justification for the High Court to have read the previous rulings of this court (Pranay Sethi), to exclude the possibility of compensation for future prospects in accident cases involving serious injuries resulting in permanent disablement. Such a narrow reading of Pranay Sethi is illogical, because it denies altogether the possibility of the living victim progressing further in life in accident cases - and admits such possibility of future prospects, in case of the victim's death. Again, in the case of **Mohd. Sabeer @ Shabir Hussain Vs Regional Manager, U.P. State Road Transport Corporation, 2022 SCC Online SC 1701** the same view was reiterated. The relevant portion of the judgment reads as follows:

"18. It is a well settled position of law that in cases of permanent disablement caused by a motor accident, the claimant is entitled to not just future loss of income, but also future prospects. It has been reiterated by this Court in multiple instances that "just compensation" must be interpreted in such a manner as to place the claimant in the same position as he was before the accident took place."

29. Following the said guidelines 40% is added here as future prospect of the claimant who comes under category of an employee on fixed income aged 21 years.

30. But adequate compensation for pain and suffering should be awarded for the victim. **In R.D Hattangadi v. Pest Control (India) (P) Ltd reported in 1995 SCC (1) 551** it was observed by the Hon'ble Apex Court that when compensation is to be awarded for 'pain and suffering' and loss of amenity of life, the special circumstances of the claimant have to be taken into account including his age, the unusual deprivation he has suffered, the effect thereof on his future life. The amount of compensation for non-pecuniary loss is not easy to determine but the award must reflect that different circumstances have been taken into consideration.

In the instant case the claimant suffered severe bodily injury at a result of alleged accident and his right arm was amputated that left him permanently disabled for the rest of his life. The amount of pain, agony, inconvenience, discomfort, frustration and mental stress that the claimant had to suffer and will have to suffer in future, can never be measured and compensated in terms of money in strict sense. There has to be a measure of calculated guess work and conjecture. An assessment, as best as can, in the circumstances, should be made. Keeping all the attending factors, this court is of the considered view that an amount of Rs. 2,50,000/- should be awarded to the claimant towards compensation for 'pain and sufferings' and an amount of Rs. 1,50,000/- should be the compensation to the claimant under the head of 'loss of amenities and enjoyment of life'.

31. The compensation for special diet, attendant, artificial limb etc should not be available in this case as there is no evidence in this regard.

32. In the appearing facts and circumstances and to ensure 'just and reasonable compensation' to the victim, the compensation is assessed as hereunder:

- The notional monthly income of the claimant has already been assessed at Rs. 8,458/- per month. In this way, his annual income comes to Rs. 8,458/- x 12 = Rs. 1,01,496/-.

- Here, the multiplier 18 is applicable and the claimant's percentage of loss of income has been assessed at 100%. In this way, the loss of income/earning capacity of the claimant is assessed at Rs. 1,01,496/- x 18 x 100% = Rs. 18,26,928/-.

- A further 40% of this amount shall be added towards loss of future prospect. Thus, the amount comes at Rs. 18,26,928/- x 40% = Rs. 7,30,771.20/-. The amount after rounding off comes at Rs.7,30,770/-.

- With this, an amount of Rs. 2,50,000/- be added towards compensation for pain and sufferings.

- The adequate compensation for loss of amenities and enjoyment of life to the tune of Rs 1,50,000/- be also added.

➢ The total compensation amount therefore comes at Rs. 18,26,928/- + Rs. 7,30,770/- + Rs. 2,50,000/- + Rs.1,50,000/- = Rs. 29,57,698/-

33. In view of section 171 of the M.V. Act, the claimant/petitioner is entitled to get an interest of at least 6% per annum on the total compensation amount from the date of filing of the claim petition i.e. 12.03.2021 till realization of the compensation amount.

34. Accordingly, these issues are also decided in favour of the claimant. Claimant/petitioner is directed to pay the deficit as well as additional Court fees at once.

35. In cosequence, the instant claim case succeeds.

36. Hence, it is

ORDERED

that the M.A.C. Case No. 39 of 2021 be and the same is allowed on contest against the O.P. No. 2/National Insurance Co. Ltd. and ex parte against the O.P. No.1 (owner of vehicle) but without costs.

The claimant/petitioner gets an award of **Rs. 29,57,698/- (Twenty nine lakhs fifty seven thousands six hundred ninety eight only)** as compensation together with interest @ 6% per annum with effect from the date of filing of the instant proceeding till realization of the entire claim.

The O.P No.2, National Insurance Co. Ltd being the insurer is directed to pay the awarded sum to the petitioner/claimant accordingly after deduction of applicable taxes, if any, either through RTGS/NEFT/IMPS, as per the ratio of the decision in case of **Parminder Singh vs Honey Goyal and Ors. reported in 2025 SCC OnLine 567** or by an account payee cheque issued in the name of claimant within 30 days from the date of delivery of this judgment failing which the rate of interest would raise to 9% p.a with effect from the date of passing of the order till realization of the entire amount and the award can be put in execution if not paid within a period of 90 days from the date hereof.

If the applicant opts for e - payment then he is to first pay the Deficit Court Fees upon the awarded compensation and then to provide through this Tribunal, the details of his savings bank accounts to the opposite party no. 2, where the amount awarded along with interest, after deduction of applicable taxes, if any, is to be transferred. If the claimant opts for payment through account payee cheque, then the claimant is directed to pay the Deficit Court Fees upon the awarded compensation, prior to getting the compensation amount from the opposite party no. 2. The account payee cheque will only be handed over to the claimant by this Tribunal only after payment of the Deficit Court Fees by the claimant.

Let a copy of this judgment be given to both the parties through their Ld. Advocate for information and compliance.

Typed by me:

Sd/-

Sd/-
Judge, M.A.C. Tribunal,
FTC- III, Diamond Harbour

(Sachindra Mohan Bhowmick)
Judge, M.A.C. Tribunal,
FTC- III, Diamond Harbour