



2026:CGHC:9949

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MAC No. 791 of 2024

1 - Magma H.D.I. General Insurance Company Limited, Through Its Legal Manager, Present Address- Office No. 501 And 512, 5th Floor, D.B. City Corporate Park, Block No. 9, Rajbandha Maidan, Raipur (C.G.) ----(Insurer)

... Petitioner(s)

versus

1 - Rohan Thakur S/o Narendra Thakur, Aged About 22 Years R/o Ghodagaon, Tahsil And District- Kondagaon (C.G.) ----(Claimant)

2 - Mahendra Ram Nalli S/o Ramvelli Chandraya, Aged About 25 Years Through Naresh Dulhani S/o Dr. J.D. Dulhani, Aged 43 Proprietor Dulhani Medical Agency In Front Of Maharani Hospital, Near Rathi Plaza, Pratapganj Para, Jagdalpur, District Bastar (C.G.) ---Driver ---- (Car Bearing No. C.G.17 Kn 8850)

3 - Naresh Dulhani S/o Dr. J.D. Dulhani, Aged About 43 Years Proprietor Dulhani Medical Agency In Front Of Maharani Hospital, Near Rathi Plaza, Pratapganj Para, Jagdalpur, District Bastar (C.G.) ----Owner ---- (Car Bearing No. C.G.17 Kn 8850)

... Respondent(s)

For Petitioner(s)	: Mr. Sourabh Sharma, Advocate
For Respondent No.1	: Mr. Prem Shankar Yadav, Advocate
For Respondents No.3 & 4	: Mr. Suresh Pandey, Advocate

Hon'ble Shri Justice Rakesh Mohan Pandey
Judgment On Board

26.02.2026

- 1) This appeal has been preferred by the appellant/insurance company under Section 173 of Motor Vehicle Act, 1988 assailing the award passed by learned Additional Motor Accident Claims Tribunal, Kondagaon District Kondagaon in Claim Case No. 91/2022 dated 21.11.2023 whereby learned Tribunal has passed an award to the tune of Rs. 6,83,800/- with interest @ 6% on account of death of Melaram Kashyap.
- 2) Facts of the case, in brief, are that on 19/08/2019 when claimant was going towards village Ghodagaon as a pillion Rider on a motor cycle, the driver of offending car bearing registration number CG 17 KN 8850 while driving it rashly and negligently dashed the motorcycle. In said accident Melaram Kashyap sustained injuries including fracture on left femur bone. The claimant appeared before the medical board and permanent disability certificate Ex.10A was issued. According to said certificate the extent of permanent disability is 40%. The Tribunal treated functional disability 40% and assessed loss of income accordingly.
- 3) The insurance company filed reply and denied averments made in the claim petition.
- 4) The driver and owner of the vehicle were proceeded *ex-parte*.
- 5) The Tribunal framed issues. Parties led evidence, thereafter,

award was passed.

- 6) Learned counsel for the appellant submits that after rejection of the stay application in this appeal, entire compensation has already been deposited. Mr. Sharma, Advocate further submits that the claimant appeared before the Medical Board after expiry of two years from the date of accident which makes the permanent disability certificate doubtful. He would further contend that there was no serious injury resulting in loss of earning of claimant and thus the learned Tribunal has granted compensation at higher side. He would pray to modify the award accordingly.
- 7) Learned counsel for the claimant opposes and submits that the treating doctor as well as one Member of Medical Board were examined by the claimant. He would contend that the claimant, who was driver by profession, sustained fracture injury on left femur bone, therefore, the tribunal has rightly assessed permanent disability 40% and granted compensation accordingly. He would contend that the learned Tribunal has granted just and proper compensation and appeal deserves to be dismissed.
- 8) Mr. Suresh Pandey, Advocate appearing for the driver and owner would submit that they were proceeded *ex-parte*. He further submits that an application filed under Order 9 Rule 13 of CPC is pending consideration before the concerned Tribunal. He further contends that the driver of the offending vehicle had valid driving licence but it could not be produced, thus, Tribunal has committed error of law while fastening the liability with the driver and owner

of the offending vehicle with stipulation to pay and recover.

9) I have heard learned counsel for the parties and perused the record.

10) As pleaded and deposed by the claimant, he was driver by occupation and suffered multiple fracture including fracture on left femur bone. On account of fracture, he is no longer able to drive the vehicle or continue with his profession, therefore, the learned Tribunal rightly assessed functional disability to the extent of 40% and assessed the income accordingly. The Tribunal considered income of claimant 7,000/- per month which appears to be proper. The learned Tribunal applied multiplier of 18 looking to the age of the claimant which was 22 years at the time of accident and further granted compensation for medical expenses incurred in treatment, special diet, future medical expenses, pain and suffering, attendant, transportation, loss of amenities etc. and thus granted sum of Rs.6,83,800/-.

11) The Hon'ble Supreme Court in the matter of **Raj Kumar Versus Ajay Kumar And Another**¹ while dealing with the similar issue held as under :-

“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

1 (2011) 1 SCC 343

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 the Manual for Evaluation of Permanent Physical Impairment for Orthopedic Surgeons, prepared by American Academy of Orthopedic Surgeons or its Indian equivalent or other authorized 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.

19. We may now summarise the principles discussed above :

- (i) All injuries (or permanent disabilities arising from injuries), do not result in loss of earning capacity.
- (ii) The percentage of permanent disability with reference to the whole body of a person, cannot be assumed to be the percentage of loss of earning capacity. To put it differently, the percentage of loss of earning capacity is

not the same as the percentage of permanent disability (except in a few cases, where the Tribunal on the basis of evidence, concludes that 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.”

12) In view of the judgment passed by the Hon’ble Supreme Court in the matter of **Raj Kumar (supra)**, and taking into consideration the findings recorded by the learned Tribunal, as well as the evidence of the treating doctor and the member of the Medical Board, it cannot be accepted that the disability certificate was issued by the concerned Medical Board without proper examination of the claimant. Thus, the contention made by Mr. Sharma is hereby rejected.

13) With regard to the submission made by Mr. Pandey, Advocate, the owner and driver of offending vehicle have neither preferred any appeal nor filed any cross-objection in this appeal, and they were proceeded ex parte before the Tribunal, therefore, no relief can be granted in their favour. Taking into consideration the facts

discussed hereinabove, this Court does not find any sufficient ground to interfere with the award.

14) Accordingly, the appeal & cross appeal fail and are hereby **dismissed**.

Sd/-
(Rakesh Mohan Pandey)
JUDGE

Saxena