



2026:CGHC:4070

**NAFR****HIGH COURT OF CHHATTISGARH AT BILASPUR****MAC No. 2019 of 2023**

**1** - United India Insurance Co. Ltd. Through Branch Manager, T.P. Nagar-Korba, District- Korba, Cg Through In- Charge, T.P. Hub, United India Insurance Co. Ltd, 1st Floor, Lic Building, Magarpara Road, District : Bilaspur, Chhattisgarh. **... Appellant**

**versus**

**1** - Shivshankar Kharsena S/o Shri Asharam Kharsena Aged About 46 Years R/o Mungadih, Tehsil- Pali, District- Korba, Cg (Claimant)

**2** - Abdul Zaheer Khan S/o Abdul Hafiz Aged About 30 Years R/o Piprapara, Kohadia, Ps- Kotwali, Korba, District : Korba, Chhattisgarh

**3** - Smt. Abha Singh W/o Late Shiv Kumar Singh R/o Mannu Chowk, Ramdas Nagar, Tikrapara, Bilaspur, District- Bilaspur, Cg (Vehicle Owner)

**... Respondent(s)**


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**For Appellant** : Mr. Akash Shrivastava, Advocate, holding the brief Mr. R. N. Pusty, Advocate

**For Respondent(s)** : Mr. Praveen K. Dhurandhar, Advocate

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**Hon'ble Shri Justice Rakesh Mohan Pandey****Judgment on Board****23/01/2026**

1. The appellant/Insurance Company has filed this appeal challenging the quantum part of the award passed by the learned First Additional Motor Accident Claims Tribunal, Katghora, District Korba, in Claim Case No.85/2021, whereby the learned Tribunal has granted compensation

to the tune of Rs.18,36,028/- with interest @7 % per annum on account of injury sustained by the claimant.

2. Facts in brief are that on 25.02.2021, at about 02.30 hrs, near main road- Baksahi, the motorcycle of the claimant was dashed by the driver of the offending Bus bearing registration No. CG-10-G-1676 by driving it rashly & negligently. In the said accident, the claimant sustained injuries including fracture of thigh bone and wrist bone.
3. The claimant filed claim case under Section 166 of the Motor Vehicle Act, wherein he pleaded that he suffered permanent disability to the extent of 98.4 % and he is no longer able to work as labour. He claimed compensation to the tune of Rs.25,70,000/-. The owner and the driver of the offending vehicle were proceeded *ex-parte*.
4. The insurance company filed reply and took a plea that the claimant has exaggerated the claim amount. The plea of contributory negligence was also taken. The Insurance Company further took a plea of breach of terms and conditions of the insurance policy.
5. The learned Tribunal framed issues, parties led evidence and thereafter award was passed.
6. Mr. Shrivastava, learned counsel appearing for the appellant would submit that there was fracture of right thigh bone and the medical board assessed the permanent disability to the extent of 70 % and 27 % of left wrist. He would contend that the learned Tribunal assessed functional disability to the extent of 100%, whereas, functional disability refers to the incapacity or loss of use of some part of the body. He would contend that there was no permanent disability and no loss of earning capacity. He has placed reliance on the judgment passed by the Hon'ble Supreme Court in the matter of ***Rajkumar v. Ajay Kumar*** reported in **2011 (1) SCC 343**; thus, he would pray to allow this appeal.
7. On the other hand, Mr. Dhurandhar, learned counsel appearing for the respondent No.1 would oppose the submissions made by Mr.

Shrivastava, and submit that the learned Tribunal has granted just and proper compensation. It is contended that the claimant was a labourer and he suffered two fractures, first over thigh, second over right wrist.

8. Mr. Dhurandhar would submit that fractures sustained by the claimant turned into permanent disability and in this regard disability certificate to the extent of 98.40 % was issued by Medical Board. He would contend that Dr. Ghanshyam Diwan (AW/2) proved contents of the disability certificate. He would submit that learned Tribunal considered the loss of earning of the claimant to the extent of 100%, as the claimant was no longer able to work as labourer. He would submit that the learned Tribunal has granted reasonable amount on conventional heads; thus, he would submit that the appeal deserves to be dismissed.
9. I have heard learned counsel for the parties and perused the record.
10. The claimant met with an accident on 25.02.2025 and suffered fracture of right thigh and right wrist. He remained hospitalized and thereafter, he appeared before the Medical Board. Medical Board issued permanent disability certificate vide Ex.P/91. Permanent disability on account of injury sustained over knee was assessed to the extent of 70.92 % and permanent disability on account of injury sustained over wrist was assessed to the extent of 27.48 %.
11. The evidence of Dr. Ghanshyam Diwan would show that no question was put forth by the insurance company as to whether the nature of the disability is temporary or permanent.
12. Admittedly, the claimant was labourer; the Insurance Company could not lead evidence to prove the contrary; the claimant pleaded and proved the fact that due to injuries sustained over right leg and right wrist, he is unable to work as labourer, which certainly affected his earning capacity.
13. In the matter of **Raj Kumar** (supra), the Hon'ble Supreme Court has held that "disability" refers to any restriction or lack of ability to

perform an activity in the manner considered normal for a human being. "Permanent disability" denotes the residual incapacity or permanent loss of use of any part of the body.

14. In case of injury, the learned Tribunal is required to determine whether the claimant has suffered disablement or permanent injuries. If the disablement is permanent, whether it constitutes permanent total disablement or permanent partial disablement; and where the percentage of disablement is assessed with reference to a specific limb, the impact of such disablement on the functioning of the entire body, that is, the extent of permanent disability suffered by the person. The relevant paragraphs No. 8, 9, 11 and 12, are reproduced hereinbelow:-

**"8.** Disability refers to any restriction or lack of ability to perform an activity in the manner considered normal for a human-being. Permanent disability refers to the residuary incapacity or loss of use of some part of the body, found existing at the end of the period of treatment and recuperation, after achieving the maximum bodily improvement or recovery which is likely to remain for the remainder life of the injured. Temporary disability refers to the incapacity or loss of use of some part of the body on account of the injury, which will cease to exist at the end of the period of treatment and recuperation. Permanent disability can be either partial or total. Partial permanent disability refers to a person's inability to perform all the duties and bodily functions that he could perform before the accident, though he is able to perform some of them and is still able to engage in some gainful activity. Total permanent disability refers to a person's inability to perform any avocation or employment related activities as a result of the accident. The permanent disabilities that may arise from motor 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.

**10.** Where the claimant suffers a permanent disability as a result of injuries, the assessment of compensation under the head of loss of future earnings, would depend upon the effect and impact of such permanent disability on his earning capacity. The Tribunal should not mechanically apply the percentage of permanent disability as the percentage of economic loss or loss of earning capacity. In most of the cases, the percentage of economic loss, that is, percentage of loss of earning capacity, arising from a permanent disability will be different from the percentage of permanent disability. Some Tribunals wrongly assume that in all cases, a particular extent (percentage) of permanent disability would result in a corresponding loss of earning capacity, and consequently, if the evidence produced show 45% as the permanent disability, will hold that there is 45% loss of future earning capacity. In most of the cases, equating the extent (percentage) of loss of earning capacity to the extent (percentage) of permanent disability will result in award of either too low or too high a compensation. What requires to be assessed by the Tribunal is the effect of the permanently disability on the earning capacity of the injured; and after assessing the loss of earning capacity in terms of a percentage of the income, it has to be quantified in terms of money, to arrive at the future loss of earnings (by applying the standard multiplier method used to determine loss of dependency). We may however note that in some cases, on appreciation of evidence and assessment, the Tribunal may find that percentage of loss of earning capacity as a result of the permanent disability, is approximately the same as the percentage of permanent disability in which case, of course, the Tribunal will adopt the said percentage for determination of compensation (see for example, the decisions of this court in *Arvind Kumar Mishra v. New India Assurance Co.Ltd.* - 2010(10) SCALE 298 and *Yadava Kumar v. D.M., National Insurance Co. Ltd.* - 2010 (8) SCALE 567).

**11.** What requires to be assessed by the Tribunal is the effect of the permanently disability on the earning capacity of the injured; and after assessing the loss of earning capacity in terms of a percentage of the income, it has to be quantified in terms of money, to arrive at the future loss

of earnings (by applying the standard multiplier method used to determine loss of dependency). We may however note that in some cases, on appreciation of evidence and assessment, the Tribunal may find that percentage of loss of earning capacity as a result of the permanent disability, is approximately the same as the percentage of permanent disability in which case, of course, the Tribunal will adopt the said percentage for determination of compensation (see for example, the decisions of this court in Arvind Kumar Mishra v. New India Assurance Co.Ltd. - 2010(10) SCALE 298 and Yadava Kumar v. D.M., National Insurance Co. Ltd. - 2010 (8) SCALE 567).

**12.** Therefore, the Tribunal has to first decide whether there is any permanent disability and if so the extent of such permanent disability. This means that the Tribunal should consider and decide with reference to the evidence: (i) whether the disablement is permanent or temporary; (ii) if the disablement is permanent, whether it is permanent total disablement or permanent partial disablement, (iii) if the disablement percentage is expressed with reference to any specific limb, then the effect of such disablement of the limb on the functioning of the entire body, that is the permanent disability suffered by the person. If the Tribunal concludes that there is no permanent disability then there is no question of proceeding further and determining the loss of future earning capacity. But if the Tribunal concludes that there is permanent disability then it will proceed to ascertain its extent. After the Tribunal ascertains the actual extent of permanent disability of the claimant based on the medical evidence, it has to determine whether such permanent disability has affected or will affect his earning capacity.”

15. In the present case, the claimant was labourer. He suffered permanent disability. The learned Tribunal considered it total permanent disablement.

16. The learned Tribunal assessed overall permanent disability to the extent of 98.40 % on the basis of disability certificate and evidence led by Dr. Ghanshyam Diwan (AW/2). It is also not in dispute that the claimant is labourer and disablement of right leg and right wrist caused 100% loss of

earning capacity, therefore, learned Tribunal rightly assessed permanent disability to the extent of 100 %.

17. Taking into consideration the above discussed facts and the law laid down by the Hon'ble Supreme Court in the matter of ***Raj Kumar (supra)***, I do not find any good ground to interfere with award passed by the learned Tribunal.

18. Accordingly, this appeal is hereby **dismissed**.

**Sd/-**

**Rakesh Mohan Pandey**  
**JUDGE**

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