



**IN THE GAUHATI HIGH COURT**  
**HIGH COURT OF ASSAM, NAGALAND, MIZORAM & ARUNACHAL PRADESH,**  
**MACApp./185/2010**

1. Sri Nirmal Barman  
S/O Late Jugal Ch. Barman,  
R/O Tarapur, Gossaipara,  
P.O. Silchar, District Cachar,  
Assam.

**.....Appellant**

***-Versus-***

1. Md Lal Mahammad Majumdar  
S/O Late Cherag Ali Majumdar,  
Village Dakhin Mohonpur Pt IV,  
PS. Sonai,  
District Cachar  
Owner of the offending vehicle
2. Md Abed Hussain Laskar  
S/O Moin Uddin Laskar  
R/O Tulwagrazm Pt-I  
Sonai  
District Cachar  
Driver of the offending vehicle
3. M/S National Insurance Company Limited  
Represented by its Divisional Manager  
Silchar Division Office  
Silchar  
Assam Insurer of the offending vehicle

**.....Respondents**

**BEFORE  
HON'BLE MR. JUSTICE MRIDUL KUMAR KALITA**

**Advocate for appellant : Mr. M. Talukdar, Advocate**

**Advocate for respondent : Ms. S. Roy, Advocate**

**Date on which judgment is reserved : 22.01.2026**

**Date of pronouncement of judgment : 19.05.2026**

**Whether the pronouncement is of the Operative part of the judgment : N/A**

**Whether the full judgment has been Pronounced : Yes**

**Judgment & Order**

- 1.** Heard Mr. M. Talukdar, the learned counsel for the appellant. Also heard Ms. S. Roy, the learned counsel for the respondent-Insurance Company.
- 2.** This appeal under Section 173 of the Motor Vehicles Act, 1988, has been preferred by the appellant, namely, Sri Nirmal Barman, impugning the judgment and award dated 09.06.2009, passed in MAC Case No. 1105/2007, by the Motor Accident Claims Tribunal, Cachar, Silchar. The appellant is mainly aggrieved with the quantum of compensation awarded to him by the impugned judgment.
- 3.** The facts relevant for consideration of the instant appeal, in brief, are that, on 18.06.2007, at about 10.00 a.m., when the

appellant was travelling in the bus bearing Registration No. AS-11-C-2760, the said bus met with an accident at Rangir Ghat. As a result of accident, the claimant sustained grievous injuries on his person. The claimant was hospitalized at Silchar Medical College and Hospital, Silchar. The appellant had to undergo amputation of left thigh on 02.08.2007, resulting in 80% physical disability.

- 4.** Thereafter, the appellant approached the Motor Accident Claims Tribunal, Cachar, Silchar by filing an application under Section 166 of the Motor Vehicle Act, 1988, claiming compensation for the injuries sustained by him in the aforementioned motor vehicle accident.
- 5.** The owner and the driver of the offending vehicle contested the case by filing written statement. The Insurance Company (present Respondent No.3) also contested the case by filing written statement. The present appellant examined himself and the doctor in support of his claim also exhibited certain documents. The respondents including the Insurance Company, did not adduce any evidence.
- 6.** Ultimately, by the judgment and award, which has been impugned in the instant appeal, the Motor Accident Claims Tribunal, Cachar awarded the compensation amount of Rs. 1,40,600/- only to the present appellant along with an interest at the rate of 6% per annum.
- 7.** Though, the records of MAC Case No.1105/2007 was called for from the Motor Accident Claims Tribunal, Cachar, Silchar, however, when the records were received, it appears that the original records could not be traced out and the Motor

Accident Claims Tribunal, Cachar, Silchar had reconstructed the records of MAC Case No. 1105/2007 and it is the reconstructed records only which were sent to this Court. It is also pertinent to mention herein that in the reconstructed records of the above-mentioned case, the depositions of the witnesses and the documents exhibited during the enquiry before the Motor Accident Claims Tribunal, Cachar were not there. Only the copy of claim petition, the copy of the written statement filed by the Insurance Company, the petition under Section 170 of the Motor Vehicles Act, 1988 as well as copy of the impugned judgement were there in the reconstructed records.

- 8.** Mr. M. Talukdar, the learned counsel for the appellant has submitted that the Motor Accident Claims Tribunal, while passing the award, has erred in granting disproportionately lesser amount of compensation when compared to the severity of the injuries sustained by the present appellants. He submits that the Motor Accident Claims Tribunal erred in not considering the fact that the claimant/appellant suffered from permanent disability to the extent of 80% due to amputation of his left leg and which has resulted in loss of his earning capacity, but the Tribunal failed to consider this aspect and has awarded a meager amount of Rs.35,000/- against the head loss of future income. He also submits that the Tribunal also awarded compensation against head of pain and suffering, loss of amenities of life, diet and nutrition, conveyance etc. on a much lower side.

9. He also submits that the Motor Accident Claims Tribunal also erred in not awarding any compensation against the head of future treatment, as the case of the appellant was of amputation of left leg which requires use of artificial limb for his normal movement, which involves cost of minimum Rs. 5,50,000/- for procuring such an artificial limb, however, no amount has been awarded against the said head.
10. He also submits that the appellant being a vegetable seller was earning a monthly income of Rs. 7,000/- at the time of the accident and he was 35 years of age. As such, by taking loss of future prospect at 40%, the compensation to be awarded against the head loss of future income comes at around Rs.15,05,280/-. He submits that accordingly the compensation awarded to the appellant by the Motor Accident Claims Tribunal in the impugned judgment and award may be enhanced and this appeal may be allowed. In support of his submissions, the learned counsel for the appellant has cited following rulings:

- i. ***Syed Sadiq Vs. Divisional Manager, United India Insurance Company Limited*** reported in ***(2014) (1) T.A.C. 369 (S.C.)***.
- ii. ***Pappu Deo Yadav Vs. Naresh Kumar and Others***, reported in ***2020 Legal Eagle, (SC) 562***.
- iii. ***Dinesh Singh Vs. Bajaj Alliance, General Insurance Company Limited*** reported in ***2014 (2) T.A.C. 737 (S.C.)***
- iv. ***Tata AIG, General Insurance Company Limited Vs. Suraj Kumar and Others***, reported in ***2025 Legal Eagal, (SC) 611***.

- v. *The Oriental Insurance Company Limited Vs. Niru @ Niharika and Others*** [Special Leave Petition (C) No. 11340 of 2020, (Supreme Court)].
- vi. *Narendra Singh Vs. Nishant Sharma & Others*** reported in **(2015) 14 SCC 353.**
- vii. *National Insurance Company Limited Vs. Pranay Sethi and Others*** reported in **2017 (4) T.A.C. 673 (S.C.)**

- 11.** On the other hand, Ms. S. Roy, the learned counsel for the respondent Insurance Company has submitted that the Motor Accident Claims Tribunal has correctly awarded the compensation of Rs. 1,40,600/- along with an interest at the rate of 6% per annum to the present appellant on the basis of the evidence on record and as such, the same needs no interference by this Court in this appeal.
- 12.** She submits that any interference by this Court is warranted only if the award is found to be shockingly inadequate or, in the event, the finding of the Motor Accident Claims Tribunal is found to be perverse or a case of misapplication of law, which is not the case in the instant case.
- 13.** She submits that the reconstructed records of MAC Case No. 1105/2007 received from the Motor Accident Claims Tribunal, Cachar, Silchar does not contain any evidence which was adduced by the appellant before the Tribunal. Hence, she submits that this Court cannot indulge in guesswork merely on the basis of the impugned judgment without going through the evidence on record. She also submits that the compensation to be awarded in a Motor Accident Claims case

must be based on evidence on record and any guesswork in that regard is impermissible in law. She submits that the Motor Accident Claims Tribunal has correctly awarded the compensation of Rs. 9,600/- against the head medical expenses on the basis of the evidence available on record. Hence, she submits that any enhancement of the said amount merely on the basis of conjectures may not be permissible.

- 14.** The learned counsel for the respondent Insurance Company submits that the functional disability or the loss of earning capacity has to be independently assessed and is different from the physical disability found on medical examination of the injured. Hence, she submits that the physical disability of 80% may not be converted into functional disability as the claimant did not adduce evidence of any expert to assess the loss of earning capacity. As such, she submits that the compensation amount of Rs. 35,000/- awarded towards loss of future income is a fair assessment and needs no interference by this Court. She submits that the compensation awarded to the claimant is based on evidence and the impugned judgment is well reasoned and needs no interference from this Court in the exercise of its appellate jurisdiction. In support of her submissions, the learned counsel for the respondent-Insurance Company, has cited following rulings.

- i. ***Raj Kumar Vs. Ajay Kumar and Another*** reported in ***(2011) 1 SCC 343.***
- ii. ***D. Hattangadi Vs. Pest Control (India) Private Limited*** reported in ***(1995) 1 SCC 551.***

**iii. *State of Haryana Vs. Jasbir Kaur and Others* reported in (2003) 7 SCC 484.**

- 15.** I have considered the submissions made by the learned counsel for both sides and have gone through the materials available on record. I have also gone through the rulings cited by the learned counsel for both sides in support of their respective submissions.
- 16.** On perusing the reconstructed record of the MAC Case No. 1105/2007, it was felt that this Court has been denied of the benefit of going through the evidence which was adduced by the appellant/claimant during the enquiry before the Motor Accident Claims Tribunal, Cachar as same is not available in the reconstructed records. However, this Court has gone through the copy of the claim petition filed by the present appellant, copy of the written statement filed by the respondent-Insurance Company as well as copy of the impugned judgement, which is not disputed by any of the parties before this Court.
- 17.** On perusal of the impugned judgement, it appears that the appellant sustained compound fractures in his left leg, which was ultimately amputated from left lower thigh on 02.08.2007. It also appears that the appellant also sustained multiple injuries on various parts of his body. It also appears that the appellant was found having 80% physical disability (*Exhibit-5, i.e., disability certificate, mention about which is there in paragraph No.9 of the impugned judgement*).

- 18.** It also appears on perusal of the impugned judgment that though, the Motor Accident Claims Tribunal, Cachar has awarded an amount of Rs. 16,000/- against the head "loss of income" and amount of Rs. 35,000/- against the head "loss of future income". However, no discussion as regards assessment of income of the deceased has been made by the Tribunal in the impugned judgment, therefore, on what basis the compensation against the head loss of income and loss of future income was granted to the appellant/claimant is not clear.
- 19.** On perusal of the impugned judgement, it appears that the Tribunal has granted a lump sum amount against said heads. Though, there is no dispute that the discretion vested in the Tribunal is quite wide, however, it is obligatory on the part of the Tribunal to be guided by the principle of awarding "just compensation" to a claimant and for doing so, it has to maintain balance between two extremes, as observed by the Apex Court in the case of ***National Insurance Company Limited Vs. Pranay Sethi and Others (Supra)*** that the balance has to be made between two extremes, i.e., a windfall and the pittance, a bonanza and a modicum.
- 20.** It appears from the record that the appellant sustained 80% physical disability due to amputation of his left leg from lower thigh, which itself shows that the appellant also suffers from functional disability as with an amputated leg from lower thigh, he is not expected to perform the work which he was

performing prior to accident in the same manner as he was doing earlier.

- 21.** The assessment of loss of future earning capacity due to permanent disability sustained by the appellant ought to have been done by the Tribunal before granting any compensation against the head "loss of future earnings".
- 22.** Though, the Tribunal has not discussed anything regarding income of the deceased in the impugned judgment, however, on perusal of the copy of the claim petition available on record, it appears that it was contended by the claimant that he was a vegetable seller when the accident took place and was earning monthly income of Rs, 7,000/-.
- 23.** Though, there is no indication, in the impugned judgment, of evidence adduced by the claimant regarding his earning source, however, even if it is assumed that the appellant was an able bodied person at the time when he met with accident, his monthly income has to be assessed at least at the rate equivalent to the monthly wages paid to a daily wage earner at that time. Accordingly, the monthly income of the appellant at the time of his accident is taken at Rs. 5000/- for the purpose of computation of loss of future earning capacity.
- 24.** There are materials on record to indicate that the appellant suffered from permanent disability to the extent of 80%. The percentage of disability indicated in the exhibit is 80%. However, in absence of the said exhibit in the records, it is not clear as to whether the percentage of disability assessed by the doctors was in respect of the left limb of the appellant or in respect of his whole body. In absence of any specific

evidence to that effect on record, it is taken that the disability of 80% of the appellant is in respect of the left limb only and as such, the functional disability i.e., loss of earning capacity may not be equal to the extent of 80%. Considering the nature of vocation in which the appellant was involved prior to his accident, the functional disability i.e., loss of future earning capacity is assessed roughly at 50%.

25. The Apex Court has held in the case of ***National Insurance Company Limited Vs. Pranay Sethi and Others (Supra)*** that an addition of 40% of established income should be the warrant where the deceased was below the age of 40 years. The same principle is applicable in case of the claimant, who has suffered from permanent disability.
26. Accordingly, taking the monthly income of the appellant at Rs.5000/- and his age at the time of accident to be 35 years, the multiplier to be applied for assessment of loss of future prospect would be 16. Accordingly, after addition of future prospect, the monthly income of the appellant comes at Rs.5000/- plus 40% of the same equal to Rs.7000/-. Thereafter, taking the extent of functional disability at 50%, the loss of future income comes to Rs.7000 x 12 x 16 x 50% equal to Rs. 6,72,000/-.
27. Since, the Apex Court has observed in the case of ***Raj Kumar Vs. Ajay Kumar and Another (Supra)*** that when compensation is awarded by treating the loss of future earning capacity, even anything more than 50%, the need to award compensation separately under the head of loss of amenities or loss of expectation of life may disappear and as a result

only a token or nominal amount may be awarded under the head loss of amenities and loss of expectation of life as otherwise there be a duplication of award of compensation. Accordingly, the amount of Rs. 30,000/- awarded, by the Tribunal, against the head loss of amenities of life is found to be reasonable.

- 28.** It also appears that though, the appellant suffered amputation of left lower limb at lower thigh level, however, no compensation against future medical expenses, specifically for the cost of artificial limb which may be necessary for the appellant considering the fact of his amputation of left lower limb has been awarded to him. Accordingly, an amount of Rs.5,00,000/- is awarded against future medical expenses for prosthetic limb to be used by the appellant.
- 29.** The compensation awarded against the other heads, being discretionary in nature and under the facts and circumstances of this case needs no interference.
- 30.** Accordingly, the claimant is entitled to compensation under following heads, which may be considered as just and reasonable amount of compensation –

| <b>S.No.</b> | <b>Head</b>               | <b>Amount (in Rs.)</b> |
|--------------|---------------------------|------------------------|
| <b>a.</b>    | Pain and suffering        | Rs. 30,000/-           |
| <b>b.</b>    | Loss of amenities of life | Rs. 30,000/-           |
| <b>c.</b>    | Medical Expenses incurred | Rs. 9,600/-            |
| <b>d.</b>    | Diet and nutrition        | Rs. 10,000/-           |
| <b>e.</b>    | Conveyance Allowance      | Rs. 10,000/-           |
| <b>f.</b>    | Loss of Income            | Rs. 16,000/-           |
| <b>g.</b>    | Loss of Future Income     | Rs.6,72,000/-          |
| <b>h.</b>    | Future Medical Expenses   | Rs.5,00,000/-          |

- 31.** Thus, the appellant is entitled to get a compensation amount of **Rs. 12,77,600/-** from the respondent Insurance Company.
- 32.** The appellant shall also get an interest at the rate of 6% per annum from date of filing of claim petition on the said amount till realization. The interest shall however, not be imposed on the component of future prospect assessed herein above as well as on the compensation awarded against future medical expenses hereinabove.
- 33.** The respondent, namely, National Insurance Company Limited, is directed to pay the aforesaid compensation minus what has already been paid by them to the appellant, within a period of six weeks from the date of this judgement.
- 34.** This appeal is accordingly disposed of.
- 35.** Send back the records of the MAC Case No. 1105/2007 to the Motor Accident Claims Tribunal, Cachar, Silchar along with a copy of this Judgment.

**JUDGE**

Comparing Assistant

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