Serial No. 50

HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT JAMMU

MA No. 384/2012

Date of Pronouncement: 13.07.2026
Uploaded on: 17.07.2026

United India Insurance Co. Ltd.,
Divisional Officer-II, Purani Mandi,
Jammu, through Dr. Rajpal
S/o Shri Pitamaber Lal, Sr. Divisional
Manager, Jammu. …..Appellant(s)/Petitioner(s)

Through: Mr. Vishnu Gupta, Advocate

Vs

01. Som Nath S/o Gulzar Singh,
R/o Village Kotli Harchanda
P/o Bhatian District Gurdaspur (PB).

02. Parvesh Gupta S/o Shiv Raj Gupta
R/o R-36, Kailash Nagar, Jammu
C/o M/S Bhagat Ram Harbans Lal,
Rajinder Bazar, Jammu.

03. Suraj alias Shiv Ram
S/o Dewan Chand, R/o Prem Nagar,
Jogi Gate, Jammu. ….. Respondent(s)

Through: Mr. Rakesh Kumar, Advocate for R-1.
Mr. Rohit Kohli, Sr. Advocate with
Mr. Raghav Gaind, Advocate for R-2.

CORAM: HON'BLE MR. JUSTICE SANJAY PARIHAR, JUDGE

ORDER
13.07.2026

01. The present appeal has been preferred by the appellant–Insurance Company challenging the award dated 24.03.2012 passed by the Motor Accident Claims Tribunal, Jammu (hereinafter referred to as "the Tribunal") in Claim Petition No. 366.

02. The facts, in brief, are that on 26.09.1996**,** respondent No. 1, while proceeding on foot towards Ware House, Jammu, was allegedly hit by Load Carrier bearing Registration No**.** JKR/9852**,** which was being driven by respondent No. 3 in a rash and negligent manner. As a consequence of the accident, respondent No. 1 sustained grievous injuries and thereafter instituted a claim petition before the Tribunal seeking compensation.

03. Upon appreciation of the evidence, the Tribunal held that respondent No. 1 had suffered 20% permanent disability of the left lower limb, resulting in stiffness of the left ankle, pain in the calf muscle, and shortening of the left leg. The Tribunal further assessed the annual loss of income at Rs. 9,600/- and awarded a total compensation of Rs. 2,25,000/-**,** inclusive of the interim compensation, payable by the appellant–Insurance Company. The Tribunal directed that the awarded amount, except the component towards future loss of income, shall carry interest at the rate of 7.5% per annum from the date of filing of the claim petition till its realization. However, since the claim petition had been dismissed twice for non-prosecution during its pendency, the Tribunal excluded a period of ten years while calculating the interest payable.

04. Aggrieved by the said award, the appellant–Insurance Company has preferred the present appeal primarily on the ground that respondent No. 1 was under the influence of alcohol at the time of the accident and had materially contributed to the occurrence of the accident.

05. It is further contended on behalf of the appellant that the accident had occurred at 5:50 P.M**.** on 26.09.1996, whereas the offending vehicle was

insured only at 7:30 P.M**.** on the same day. According to the appellant, the owner of the vehicle had fraudulently obtained the insurance policy after the occurrence of the accident by concealing and suppressing the material fact that the accident had already taken place.

06. Learned counsel for the appellant further submits that the previous insurance policy had expired on 24.09.1996 and, therefore, there was no valid insurance coverage at the time of the accident. It is argued that the appellant led evidence before the Tribunal to establish that the accident had taken place at 5:50 P.M. and that the subsequent registration of the FIR was merely an afterthought. It is also submitted that respondent No. 1 himself admitted in his testimony that the accident had occurred at about 7:00 P.M. Consequently, it is argued that, irrespective of the exact timing, the vehicle was not covered by a valid insurance policy when the accident occurred and, therefore, the liability, if any, ought to have been fastened upon the owner of the vehicle and not upon the appellant–Insurance Company.

07. *Per contra*, learned counsel appearing for the respondents supports the impugned award and submits that the Tribunal has correctly appreciated the evidence on record. It is contended that the appellant's plea that the accident occurred at 5:50 P.M**.** stands belied by the documentary evidence, particularly the FIR, which records the time of occurrence as 8:45 P.M and the Medical Record Department (MRD) entry No. 124658**,** which shows that respondent No. 1 was admitted to the hospital on 26.09.1996 at 9:10 P.M. The same MRD number also finds mention in the disability

certificate. It is, therefore, argued that the investigator's assertion regarding the time of admission to the hospital is not borne out by the official records.

08. It is further submitted that the allegation that respondent No. 1 was in an intoxicated condition at the time of the accident is an afterthought, as no such plea was taken before the Tribunal, nor was respondent No. 1 confronted with any such suggestion during the course of evidence. It is lastly contended that the Tribunal has correctly assessed the extent of permanent disability suffered by respondent No. 1 and the consequential loss of earning capacity, and that the compensation awarded is just, fair, and calls for no interference.

09. Learned counsel for the appellant, placing reliance upon the decision of the Supreme Court in *Raj Kumar v. Ajay Kumar & Another*, **2011 ACJ 1**, submitted that while assessing compensation on account of permanent disability, the Tribunal is required to first determine whether the claimant has suffered any permanent disability and, if so, the extent thereof. It was contended that the disability suffered by respondent No. 1 pertains only to a particular limb and not to the whole body. Therefore, where the disability is expressed with reference to a specific limb, the Tribunal is required to assess the impact of such disability on the overall functioning of the body and its consequential effect on the claimant's earning capacity before awarding compensation.

10. Learned counsel further placed reliance upon the judgment in *National Insurance Co. Ltd. v. Sobina Iakia & Others*, 2007 ACJ 2043, to contend that the insurance policy covering the offending vehicle had already expired

prior to the accident and that the renewal premium was deposited only after the occurrence of the accident. It was, therefore, argued that the contract of insurance was not in force at the time of the accident and, consequently, no liability could be fastened upon the appellant–Insurance Company.

11. I have heard both the learned counsels at length and examined the record.

12. Learned counsel for the appellant has placed reliance upon the decision reported in **2007 ACJ 2043** to contend that the question which arose for consideration therein was whether an Insurance Company could be held liable to pay compensation for an accident that had occurred during a period when the insurance policy was not in existence. It was held that, in order to curb the growing practice of obtaining insurance policies after the occurrence of accidents, the effectiveness of an insurance policy commences only from the date and time specifically mentioned therein and cannot be given retrospective effect.

13. In the present case, it is an admitted position that, as per the policy documents placed on record by the appellant, the offending vehicle bearing Registration No**.** JKR/9852, a Mini Load Carrier (1985 Model), was insured under Policy No.111800/31/21/13054/96, Certificate No**.** 6/13054/96**,** commencing from 26.09.1996 and ending on 25.09.1997**.** On the other hand, the respondents have asserted that the accident occurred at 8:45 P.M**.** on 26.09.1996**,** whereafter FIR No.438/96 u/s 279/337 RPC came to be registered at 8:55 P.M. on the basis of Daily Diary Entry No. 29 dated 26.09.1996, recorded at Police Post, Nehru Market. The FIR records that information had been received from a reliable source that the aforesaid

vehicle, while being driven in a rash and negligent manner, had struck a pedestrian, caused injuries.

14. The Tribunal rejected the appellant's contention that the offending vehicle was not insured at the time of the accident, holding that the evidence adduced by the appellant was insufficient to substantiate the said plea. The Tribunal recorded a finding that the accident had occurred at 8:45 P.M. on 26.09.1996. In arriving at the said conclusion, reliance was placed upon the testimony of PW-Kuldeep Choudhary, Medical Record Keeper, Government Medical College, Jammu, who deposed that respondent No. 1 was admitted to the hospital on 26.09.1996 at 9:10 P.M. The said fact also finds corroboration from the Medical Record Department (MRD) Entry No. 123658**.**

15. The Tribunal, accordingly, disbelieved the appellant's version that the accident had taken place at 5:50 P.M. However, learned counsel for the appellant contends that the Tribunal failed to appreciate that respondent No. 1, in his own deposition, admitted that the accident had occurred at about 7:00 P.M. According to the appellant, this admission assumes significance while determining whether a valid policy of insurance was in force at the time of the accident and, consequently, whether the liability could legally be fastened upon the appellant–Insurance Company.

16. In the light of the statement of the injured (respondent No. 1), the medical record produced before the Tribunal, and the contents of the First Information Report, the appellant's assertion that the accident had occurred at 5:50 P.M**.** stands completely discredited. Merely because respondent No.

1, while deposing before the Tribunal nearly fourteen years after the occurrence, stated that the accident had taken place at about 7:00 P.M**.**, such an approximation cannot be construed to override or displace the contemporaneous documentary evidence available on record.

17. The accident occurred on 26.09.1996, whereas respondent No. 1 was examined before the Tribunal on 29.12.2010, almost fourteen years after the occurrence. It is a matter of common experience that, with the passage of time, human memory tends to fade. Therefore, no undue advantage can be drawn by the appellant from the claimant's approximate recollection of the time of the accident, particularly when the contemporaneous documentary evidence relied upon by the Tribunal consistently establishes that the occurrence took place at 8:45 P.M**.**

18. The appellant's plea that the accident had occurred at 5:50 P.M**.** rests solely upon hearsay material. The investigation report dated 15.09.2003**,** relied upon by the appellant, merely records that the investigator visited the Government Medical College, Jammu, where an unidentified official, purportedly maintaining hospital records, informed him that the injured had been brought to the hospital at about 5:50 P.M. Such information is clearly hearsay and carries little evidentiary value. Significantly, when PW-Kuldeep Choudhary**,** the Medical Record Keeper, Government Medical College, Jammu, entered the witness box, no suggestion whatsoever was put to him regarding the alleged admission of respondent No. 1 at 5:50 P.M**.** On the contrary, the witness categorically deposed that, as per the official hospital record, the injured was admitted at 9:10 P.M.**,** on

26.09.1996. The Tribunal was, therefore, fully justified in placing reliance upon the official medical record in preference to the unsubstantiated investigation report.

19. A perusal of the insurance policy further reveals that the entries **"07:30 P.M."** and **"For MACT Case Only"** appear to have been written in ink different from that used for the remaining particulars contained in the policy document. The policy, as originally issued, does not unequivocally indicate the precise time from which the insurance cover was to become operative, and the aforesaid entries prima facie appear to have been inserted subsequently. When this aspect was specifically put to the learned counsel for the appellant during the course of hearing, no satisfactory explanation could be furnished.

20. Once the claimant had established, on the basis of reliable documentary evidence, that the accident had occurred after the time from which the insurance policy became effective, and the appellant failed to dislodge that evidence by leading cogent and convincing material, the Tribunal rightly concluded that the offending vehicle stood insured with the appellant–Insurance Company with effect from 26.09.1996 at 7:30 P.M. Consequently, the liability to satisfy the award was rightly fastened upon the appellant. Ld. Counsel for the appellant also sought to contend that respondent No. 1 had contributed to the occurrence of the accident on the ground that the Medico-Legal Report recorded that he was under the influence of alcohol when he was brought to the hospital.

21. The said contention deserves to be rejected. Neither the First Information Report nor the police investigation attributes any negligence or contributory negligence to respondent No. 1. On the contrary, the evidence adduced by the claimant, duly corroborated by the FIR and the police investigation, establishes that the offending vehicle bearing Registration No. JKR/9852 approached from behind, was driven in a rash and negligent manner, and struck the claimant, resulting in a fracture of his left leg. The claimant further deposed that the driver neither sounded the horn nor exercised due care before hitting him. This testimony remained substantially unchallenged during cross-examination, and no evidence was led by the appellant to establish that the claimant had contributed to the occurrence of the accident. Mere reference in the Medico-Legal Report to the claimant being under the influence of alcohol, in the absence of any evidence establishing a causal connection between such condition and the occurrence of the accident, is wholly insufficient to sustain a plea of contributory negligence.

22. It was next contended that the claimant had suffered only 20% permanent disability of the left lower limb and not of the whole body and, therefore, the Tribunal erred in assessing the loss of earning capacity on that basis. It was also argued that the disability certificate had been issued more than eight years after the accident.

23. Though the submission is not without substance, the evidence on record does not support the appellant's contention. Dr. R.S. Manhas, who issued the disability certificate (Exhibit PW-RSM), categorically deposed that the claimant had suffered 20% permanent disability of the left lower limb**,** resulting in stiffness of the left ankle, pain in the calf muscle, and shortening of the left leg. The witness further stated that these injuries would permanently impair the claimant's ability to run, walk briskly, and perform strenuous physical work. It also stands established on record that the claimant was employed as a mason**,** a vocation requiring continuous physical labour. This fact was never disputed by the appellant. In these circumstances, the Tribunal rightly assessed the functional disability by taking into account the impact of the injuries on the claimant's earning capacity rather than merely the percentage of physical disability certified with respect to the limb. The assessment of functional disability at 20% cannot, therefore, be said to be arbitrary or contrary to the evidence on record.

24. Learned counsel for the appellant placed reliance upon the decision of the Supreme Court in *Uttar Pradesh State Road Transport Corporation v. Vibhor Fialok & Another* Civil Appeal 1337-1338/2019 D.O. D 18.02.2025 to contend that the percentage of functional disability adopted by the Tribunal bears no reasonable nexus with the medical evidence. The reliance placed on the aforesaid decision is misconceived. In that case, although the medical evidence certified 40% permanent disability of the right lower limb**, t**he Tribunal proceeded to assess 40% disability of the whole body. The High Court enhanced the functional disability to 48%**,** whereas the Supreme Court held that the disability of a particular limb could not automatically be equated with disability of the whole body and, in the facts of that case, assessed the whole-body disability at 12%**.** The claimant therein was engaged in private employment involving comparatively less physical exertion. The facts of the present case stand on an entirely different footing, as the claimant was working as a mason, whose livelihood depends predominantly upon physical mobility and manual labour. Consequently, the ratio of the aforesaid judgment is distinguishable on facts and does not advance the appellant's case.

25. I have also considered the memorandum of appeal and the grounds urged therein. Upon a careful appraisal of the entire material available on record, I find myself in agreement with the submissions advanced on behalf of the respondents. The Tribunal has appreciated the oral and documentary evidence in its correct perspective and has recorded findings which are supported by the evidence on record. No perversity, illegality, or misappreciation of evidence has been demonstrated so as to warrant interference in appellate jurisdiction. The quantum of compensation awarded is also just and reasonable. It is noteworthy that the Tribunal has already excluded a period of ten years while awarding interest, having regard to the fact that the claim petition had twice been dismissed for non-prosecution during its pendency.

26. In view of the foregoing discussion, I find no merit in the present appeal. The impugned award does not call for any interference.

27. Accordingly, the appeal is ***dismissed***. The compensation awarded by the Tribunal, if not already paid, shall be released to respondent No. 1 forthwith in terms of the award. Any amount already paid, whether by way of interim compensation or during the pendency of the proceedings, shall be duly adjusted against the final amount and if deposited during appeal shall be released. In case not then Tribunal shall take steps to execute the award in its entirety. Copy of order be notified to Tribunal and record be sent back.

(Sanjay Parihar)
Judge

Jammu
13.07.2026
Renu

Whether the order is speaking : Yes

Whether the order is reportable: Yes