HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

S.B. Civil Miscellaneous Appeal No. 2320/2024

Vikram Sharma S/o Bhimraj Sharma, Aged About 39 Years, R/o Kumarow Ka Jaw, Behind College, Falna, District Pali, At Present 9/627 Kudi Bhagtasani Housing Board, Jodhpur.

----Appellant

Versus

1. Ashok Choudhary S/o Himtaram Choudhary, R/o Jyoti Nagar, Chandana Bhakar, Pratap Nagar, Jodhpur, Police Thana Pratap Nagar, Jodhpur (Driver Of Vehicle)
2. Valaram S/o Shri Achlaram, R/o Jai Malanai Sarano Ka Tala, Tehsil Sinhari, District Barmer. (Owner Of Vehicle)
3. Shriram General Insurance Company Limited, E-08 E.p.i.p, Sitapura Industrial Area, Jaipur (Insurance Company)

----Respondents

For Appellant(s)	:	Mr. Vikram Sharma, appellant in person
For Respondent(s)	:	Mr. Vishal Singhal

HON'BLE MR. JUSTICE MUKESH RAJPUROHIT

<u>Order</u>

<u>23/03/2026</u>

1. This appeal has been preferred by the appellant-claimant, under Section 173 of the Motor Vehicles Act, 1988, assailing the award dated 02.05.2024 passed by the Motor Accident Claims Tribunal (MACT), Jodhpur Metropolitan in MACT Case No. 205/2021, whereby the Tribunal partly allowed the claim petition and awarded a total compensation of Rs. 1,30,581/- with interest at 6% per annum from 21.07.2020.

2. Briefly stated, on 03.04.2019 at about 10.00 p.m., the appellant, a practising advocate, was riding his motorcycle bearing

No. RJ-27-SL-6419 when a Bolero Camper bearing No. RJ-23-JB-0325, driven rashly and negligently by respondent No. 1, hit the motorcycle from behind near Police Station Kudi Bhagtasani, Jodhpur. The appellant sustained multiple injuries and remained admitted at AIIMS, Jodhpur from 04.04.2019 to 17.04.2019 (13 days), where he underwent surgical treatment. A duly constituted Medical Board assessed his permanent disability at 76%.

3. The appellant who was only 34 years old, filed a claim petition, claiming a total compensation of Rs.1,65,16,540/- from the respondents-non-claimants jointly and severally. The claim petition was contested by the respondents. After conclusion of trial, the tribunal awarded a total sum of Rs. 1,30,581/- as compensation under various heads along with interest @ 6% per annum from the date of filing claim petition i.e. 21.07.2020.

4. The findings of the Tribunal with respect to negligence, ownership and liability are not under challenge. The present appeal is confined only to the quantum of compensation.

5. Appellant present in person contends that the Tribunal has awarded grossly inadequate compensation by ignoring material evidence and settled legal principles governing assessment of compensation, particularly in relation to permanent disability and its effect on earning capacity.

6. It is submitted that the Tribunal erroneously disregarded uncontroverted evidence relating to loss of income, permanent disability, medical treatment and allied expenses, including a valid disability certificate issued by a competent Medical Board.

7. It is further submitted that the Tribunal gravely erred in concluding that the appellant's 76% permanent disability had no bearing on his earning capacity, despite its evident impact on his professional work as an advocate. The Tribunal failed to apply settled principles of law concerning assessment of disability, loss of future income and non-pecuniary damages, and unjustifiably denied compensation under various heads, including loss of hospitalization expenses including attendant charges, nourishing died and loss of estate. The appellant, therefore, prays that the compensation be suitably enhanced and modified in accordance with established legal principles.

8. *Per contra*, learned counsel for the respondent–Insurance Company, while supporting the impugned award, submits that the Tribunal has duly appreciated the entire evidence on record and has correctly assessed and computed the compensation. It is contended that the award passed is just, fair and in accordance with law, and therefore, does not call for any interference by this Court.

9. I have considered the rival submissions, perused the record of the case and the precedent law on the issue.

10. A perusal of the record reveals that in the accident occurring on 03.04.2019 near Police Station Kudi Bhagtasani on the Shatabdi Circle to Sangaria road, the appellant, Vikram Sharma, sustained injuries necessitating hospitalization and treatment. The Tribunal's records indicate that the appellant was a practising lawyer. The medical evidence reveals that appellant suffered total eight injuries including two grievous along with a fracture in his

right hand, resulting in 76% permanent disability (Ex.85). The appellant was hospitalized at AIIMS, Jodhpur for 13 days, and the corresponding medical bills and treatment records are duly on record. The disability certificate issued by the Medical Board corroborates the permanent disability assessment. Taking all factors into account, the Tribunal awarded a total sum of Rs. 1,30,581/-.

11. The Tribunal has though not assessed the monthly income of the appellant, however, considering that the appellant was working as a practicing advocate in the year 2019, this Court deems it appropriate to assess his monthly income at Rs. 10,000. Moreover, the Tribunal has committed a manifest error in denying compensation towards loss of future earning capacity despite the appellant having suffered 76% permanent disability. The reasoning that the disability pertains only to the right hand and not the whole body, coupled with the non-examination of the certifying doctor, is legally unsustainable. It is well settled that the assessment must focus on the functional disability and its impact on the earning capacity of the claimant, rather than the mere medical classification of disability.

In ***Raj Kumar v. Ajay Kumar; (2011) 1 SCC 343***, the Hon'ble Supreme Court has held that the determination of compensation must be based on the effect of the disability on the earning capacity of the injured. In the present case, the appellant is a practising advocate, and 76% permanent disability in his dominant right hand directly impairs his ability to discharge core professional functions such as drafting, writing and conducting court proceedings. The uncontroverted testimony of the appellant sufficiently establishes such functional disability. Moreover, the disability certificate (Ex.85) issued by a duly constituted Medical Board of AIIMS, Jodhpur carries significant evidentiary value and cannot be discarded in the absence of any rebuttal evidence or direction for reassessment.

Further, in view of the Constitution Bench judgment in ***Pappu Deo Yadav vs. Naresh Kumar & Ors.;*** **2021 1 Supreme 425**, the appellant, being self-employed and below 40 years of age, is entitled to an addition of 40% towards future prospects.

12. Insofar as the computation of compensation is concerned, the multiplier applicable for the age of 34 years is 16, as laid down in ***Sarla Verma v. Delhi Transport Corporation; (2009) 6 SCC 121***. Having regard to the nature of avocation of the appellant and the extent of functional disability suffered, this Court is of the view that the permanent disability assessed at 76% has a direct and substantial bearing on his earning capacity. Consequently, the loss of future income is required to be computed by applying the established principles, taking into account the affirmed monthly income, addition towards future prospects, appropriate multiplier, and the extent of functional disability.

13. The medical record reveals that appellant remained hospitalized for 13 days and required assistance during recovery post-hospitalization also. Considering the nature of injuries and

disability, a lump sum of Rs. 1,00,000/- is awarded towards attendant charges.

14. The Tribunal has awarded a sum of Rs. 35,000/- towards pain and suffering, which, in the considered view of this Court, is wholly inadequate having regard to the nature and gravity of injuries sustained by the appellant. The record reflects that the appellant suffered multiple injuries, including grievous injuries and a fracture in his dominant right hand, necessitating surgical intervention and hospitalization for a period of 13 days. The permanent disability assessed at 76% has resulted not only in prolonged physical pain but also enduring mental trauma, loss of normal amenities of life and professional handicap. Pain and suffering, being a non-pecuniary head, cannot be measured with mathematical precision; however, the compensation must be commensurate with the extent of injury, duration of treatment and its long-term impact on the quality of life. In these circumstances, the amount awarded by the Tribunal is enhanced to Rs. 1,50,000/-.

15. Insofar as hospital incidental expenses are concerned, the Tribunal has awarded a sum of Rs. 6,500/-, which appears to be on the lower side and not reflective of the actual expenditure likely to have been incurred during hospitalization. It is a matter of common knowledge that expenses towards special diet, attendant visits and other incidental charges are inevitably incurred during the period of hospitalization, particularly when treatment is taken at a tertiary care institution like AIIMS, Jodhpur. Considering that the appellant remained hospitalized for 13 days, it would be just

and reasonable to assess such expenses at Rs. 1,400/- per day, which comes to Rs. 18,200/-. Accordingly, the compensation under this head is enhanced to Rs. 18,200/-.

16. The Tribunal has awarded a sum of Rs. 6,500/- towards nourishing diet. However, in cases involving grievous injuries, surgical intervention and prolonged recovery, adequate nutrition forms an essential component of treatment and recuperation. The requirement of a protein-rich and special diet during the post-operative and recovery period cannot be overlooked. Taking a reasonable and pragmatic view of the matter, the amount awarded under this head deserves enhancement, and is accordingly increased to Rs. 15,000/-.

17. As regards medical expenses, the Tribunal has awarded a sum of Rs. 75,581/- based on the bills and vouchers produced on record. A perusal of the material available does not indicate any discrepancy or infirmity in the said assessment. The said amount, being duly supported by documentary evidence, is therefore, affirmed and maintained.

18. The Tribunal has awarded a sum of Rs. 2,000/- towards loss of estate, which is evidently meagre and not in consonance with the settled principles governing compensation under conventional heads. Having regard to the facts and circumstances of the case and the principles laid down for grant of just compensation, this Court deems it appropriate to enhance the amount under this head to Rs.10,000/-.

19. The compensation awarded under other non-pecuniary head i.e. loss of comfort and reduced life expectancy and shorter lifespan, is affirmed.

20. The total compensation payable to the appellant is, thus, recomputed as under :

Head of Compensation	**Amount awarded by tribunal**	**Enhanced amount**
Medical expenses (proved bills)	Rs. 75,581	Rs. 75,581
Hospital incidental charges (13 days x Rs. 1,400/-)	Rs. 6,500	Rs. 18,200
Attendant charges	NIL	Rs. 1,00,000
Nourishing diet	Rs. 6,500	Rs. 15,000
Loss of estate	Rs. 2,000	Rs. 10,000
Loss of future income due to permanent disability [Rs.10,000 + 40% = Rs. 14,000 x 12 x 16 x 76%]	NIL	Rs. 20,42,880
Pain, suffering and mental agony	Rs. 35,000	Rs. 1,50,000
loss of comfort and reduced life expectancy and shorter lifespan	Rs. 5,000	Rs. 5,000
Total	**Rs.1,30,581**	**Rs. 24,16,661**
Less: Compensation awarded by tribunal		Rs. 1,30,581
Enhanced compensation		**22,86,080**

21. In the result, the appeal is partly allowed. The impugned award dated 02.05.2024 passed by the tribunal is modified. The total compensation is enhanced from Rs.1,30,581/- to Rs.22,86,080 (Rupees Twenty Two Lakhs eighty six Thousand Six and eighty only). The respondents jointly and severally shall pay Rs. 22,86,080 (Rupees Twenty Two Lakhs eighty six Thousand Six and eighty only) to the appellant with interest at 6% per annum from 21.07.2020 till the date of actual payment. The Insurance Company (respondent No. 3) shall deposit the said amount before the MACT, Jodhpur Metropolitan, within two months from the date of this order. The amount shall be disbursed in accordance with the direction given in the impugned award.

22. It is made clear that if the awarded amount or any part of it has already been paid, then same shall be adjusted against the enhanced amount.

23. All pending application(s), if any, also stand disposed of.

24. The original record of the tribunal along with a certified copy of this order be remitted back forthwith.

(MUKESH RAJPUROHIT),J

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