IN THE HIGH COURT OF JHARKHAND AT RANCHI
(Civil Miscellaneous Appellant Jurisdiction)
M.A. No.225 of 2018

Gautam Kumar Banarjee, 57 years, S/o Late Kishori Mohan Banarjee, Resident of Hirapur, Near Police Line, Premchand Nagar, P.O. & P.S. Dhanbad, District-Dhanbad

….. Plaintiff/Claimant/Appellant

Versus

1. Dr. C.P. Vidyarthi, S/o Late J. Prasad, Resident of Saraidhela, P.O. & P.S. Saraidhela, Dist. Dhanbad(owner of Maruti Car no.WB-38L/4383)
2. M/s National Insurance Company Ltd, Divisional Office at B.P. Agarwala Building, Dhansar, (1st Floor), Dhansar, P.O. and P.S.-Dhansar, District-Dhanbad

.... Defendants/ Respondents/Opp. Parties

PRESENT
HON'BLE MR. JUSTICE PRADEEP KUMAR SRIVASTAVA

For the Appellant : Mr. M.B. Lal, Adv.
Mr. Sheo Kumar Singh, Adv.
Mr. Rajiv Kumar Karan, Adv.

For the Resp. No.1 : Mr. Mrinal Kanti Roy, Adv.
Mr. Manish Kumar, Adv.

For the Resp. No.2 : Mr. Yogendra Prasad, Adv.

JUDGMENT

CAV On 22/11/2023 **Pronounced On 20/12/2023**

Heard learned counsel for the parties.

2. Present miscellaneous appeal has been preferred by the appellant (victim of accident) for enhancement of compensation awarded by Motor Accident Claim Tribunal, Dhanbad passed in MACT Case No. 04 of 2004, whereby and whereunder an award of Rs.8,16,492 /- along with simple interest @ 6 % per annum has been passed in favour of the claimant/appellant under Section 166 of the Motor Vehicles Act, 1988.

3. Shorn of unnecessary facts, the case of the claimant/appellant is that on 26.04.2003 at about 7 P.M., the claimant/appellant along with his friend was returning from Saraidhela to his village Hirapur by his scooter bearing Reg. No.BR-17C-7686 and reached near Police Line, Prem Chandra Nagar, meanwhile, a Maruti Car bearing Reg. No.WB-38L-4383 being driven in a rash and negligent manner coming from opposite direction dashed the scooty of the claimant/appellant, due to which, the claimant sustained grievous injury in his right leg. Thereafter, the claimant/appellant was sent to Central Hospital, Saraidhela, Dhanbad for his treatment, where he was treated from 26.04.2003 to 29.04.2003 and thereafter he was referred to Higher Centre of Orthopedic and admitted in Clinic at Bartand, Dhanbad from 29.04.2003 to 09.05.2003 and his operation was done on 30.04.2003 and imported steel rod was implanted in the right thigh with modern technology. It is further alleged that as per advice of doctor, the claimant/appellant was completely bed ridden and he was again admitted to Pandit Clinic from 19.10.2003 to 29.10.2003 for conducting bone grafting and since then, he is still bed ridden and his treatment is continuing. It is further alleged that the Officer-in-Charge registered a case bearing Saraidhela P.S. Case No.273 of 2003 under Sections 279, 337, 338 of Indian Penal Code against the driver of the said Maruti Car bearing Reg.No.WB-38L-4383 and after usual investigation, the concerned investigating officer submitted charge-sheet against the Rashmi Kumari, the driver of the said Maruti Car for the offence punishable under Sections 279, 337, 338 of Indian Penal Code. The claimant/appellant received severe injuries on his body and soft tissues due to this unfortunate road accident, he lost his capacity to move freely and became absolutely bed ridden and his treatment is still going on. The claimant/appellant is a practicing lawyer of civil/criminal and MACT has suffered huge pain, mental agony and huge loss of professional income which caused entire family into hardship. Therefore, the claimant filed this motor accident claim for compensation under Section 140 and 166

of M.V. Act for the compensation of Rs.17,00,000/-(Seventeen Lakhs).

4. Learned counsel for the appellants has submitted that learned Tribunal has failed to appreciate the monthly income of the appellant, who is a practicing lawyer at Dhanbad, District Court and he is also serving as panel lawyer in National Insurance Company since 11.09.1992 and proved his monthly income to be Rs.14,000/- per month, but the learned Tribunal has fixed Rs.9,000/- per month without any plausible reasons. It is further submitted that learned Tribunal has also failed to ascertain the compensation amount in accordance with settled principles of law, without proper consideration of the future prospect, mental pain and suffering and other conventional heads of compensation. As such the impugned award is fit to be set aside and the claimant/appellant is entitled for enhancement of the compensation amount.

5. ***Per contra:*** learned counsel appearing for the respondents submits that learned Tribunal has considered overall aspects of the case and rightly determined the compensation amount which suffers from no illegality or infirmity calling for any interference. It is further submitted that the calculation of the compensation on the basis of handicapped certificate issued by the medial board constituted under the chairmanship of Civil Surgeon-cum-CMO, Dhanbad shows that the claimant/appellant-Gautam Banerjee sustained disability/ physically handicapped to the extent of 48 % is based upon conjuncture and surmise. Non examination of any member of the Board of doctors, who examined and issued Disability Certificate (Ext-4) vitiates the whole approach of the learned Tribunal regarding 48% functional disability and corresponding loss of earning capacity/economic loss. Learned counsel for the respondents has placed reliance upon reported judgment rendered in ***Raj Kumar v. Ajay Kumar & Anr. (2011) 1 SCC 343***. Hence, this miscellaneous appeal is fit to be dismissed.

6. From perusal of the impugned award, it transpires that on the basis of pleadings of parties, the learned Tribunal has settled following issues for adjudication:

(i) whether the claim application is maintainable?

(ii) whether the claimant has got valid cause of action?

(iii) whether the claimant-Gautam Kumar Banerjee has sustained injuries in the motor vehicle accident caused due to rash and negligent driving of car bearing No.WB13L4383 ?

(iv) whether the claimant is entitled for compensation, if so, for what amount and from whom?

(v) To what other relief/reliefs the claimant is entitled?

7. In the course of trial, the claimant has examined all together six witnesses, they are PW 1-Timri Banarjee, PW 2 Gautam Kumar Banerjee (plaintiff/claimant/injured himself) (claimant/plailntiff himself), PW 3 Navin Gupta, PW 4 NIrmal Chakarborty, PW 5-Dr. Vijay Pratap Sinha and PW 6 Ruma Banarjee (wife of plaintiff/claimant/injured)

8. The following documents have been brought on record on behalf of the plaintiff/claimant:-

Ext.1 : FIR of Dhanbad(Seraidhela) P.S. Case No.273 of 2002,

Ext.2 : Charge-sheet of Dhanbad (Seraidhela) P.S. Case No.273 of 2002,

Ext.3 to 3/12 : Cash-memo of medical bills,

Ext.4 D : Disability Certificate,

Ext.5 to 5/43: Medical bills of plaintiff/claimant Gautam Kumar Banerjee

Ext.6 to 6/14: Various Medical Prescription and fitness certificate

9. On the other hand the defendant No.2 M/s National Insurance Company Ltd. has filed following documentary evidence:-

Ext.A : Copy of driving license verification of D/L No.7239/02 (pvt.) of Sangita Kumari, D/o Dr. C.P. Vidyarithi.

Ext.B : Xerox copy of driving license report of Sangita Kumari issued by DTO, Lohardaga on 14.07.2004,

Ext.C: certified copy of Insurance policy No.150504/31/02/6135998 which was valid and effective from 28.03.2003 to mid-night of 27.03.2004.

10. After considering the evidence oral as well as documentary led by respective parties, the learned tribunal has decided the monthly income of the claimant to be Rs.9,000/- from his practice as lawyer on the ground that the claimant has filed no documentary evidence and certificate of his income as well as his enrollment as an advocate from the Bar Counsel. Hence, the monthly income of Rs.14,000/- as claimed by the claimant/appellant was disbelieved.

The age of appellant on the date of occurrence was 45 years is an admitted fact and there is no dispute about multiplier of 14 applicable in this case. The disablement/handicapped certificate issued by Civil Surge-Cum-Medical Officer, Dhanbad (Ext.-4) shows 48 % disability.

11. The learned Tribunal has awarded compensation to the claimant/appellant assuming the 48% physical disability to be equivalent to the loss of future earning capacity. Accordingly, annual income Rs.1,08,000/- was reduced with 48% disability and the amount of compensation was calculated under following heads:-

Sr. No.	Particulars	Amount (In rs.)
1.	loss of income equal to [1,08,000 x 48/100]x 14=	7,25,760/-

2.	expenditure incurred towards the treatment:	Rs.55,732/-
3.	pain and suffering and loss of amenities of life	Rs.25,000/-
4.	special diet	Rs.10,000/-
	Total	Rs.8,16,492/

It was further observed by the learned tribunal that the claim case was filed on 05.01.2004 and was dismissed for default on 26.02.2015 which was restored on 18.01.2017 with condition that the claimant shall not claim any interest from 26.02.2015 till 18.01.2017, this case was dragged for 11 years at the stage of evidence of claimant/appellant due to his fault, hence, the claimant is entitled to get interest @ 6 % per annum on the awarded amount from 18.01.2017 till its payment.

12. In the case of ***Raj Kumar v. Ajay Kumar & Anr. (2011) 1 SCC 343,*** the Hon'ble Apex court has propounded guidelines general principles relating to compensation in injury cases:-

> "5. The provision of the Motor Vehicles Act, 1988 ("the Act", for short) makes it clear that the award must be just, which means that compensation should, to the extent possible, fully and adequately restore the claimant to the position prior to the accident. The object of awarding damages is to make good the loss suffered as a result of wrong done as far as money can do so, in a fair, reasonable and equitable manner. The court or the Tribunal shall have to assess the damages objectively and exclude from consideration any speculation or fancy, though some conjecture with reference to the nature of disability and its consequences, is inevitable. A person is not only to be compensated for the physical injury, but also for the loss which he suffered as a result of such injury. This means that he is to be compensated for his inability to lead a full life, his inability to enjoy those normal amenities which he would have enjoyed but for the

injuries, and his inability to earn as much as he used to earn or could have earned.

6. The heads under which compensation is awarded in personal injury cases are the following:

Pecuniary damages (Special damages)

(i) Expenses relating to treatment, hospitalisation, medicines, transportation, nourishing food, and miscellaneous expenditure.

(ii) Loss of earnings (and other gains) which the injured would have made had he not been injured, comprising:

(a) Loss of earning during the period of treatment;

(b) Loss of future earnings on account of permanent disability.

(iii) Future medical expenses.

Non-pecuniary damages (General damages)

(iv) Damages for pain, suffering and trauma as a consequence of the injuries.

(v) Loss of amenities (and/or loss of prospects of marriage).

(vi) Loss of expectation of life (shortening of normal longevity)."

In routine personal injury cases, compensation will be awarded only under heads (i), (ii)(a) and (iv). It is only in serious cases of injury, where there is specific medical evidence corroborating the evidence of the claimant, that compensation will be granted under any of the heads (ii)(b), (iii), (v) and (vi) relating to loss of future earnings on account of permanent disability, future medical expenses, loss of amenities (and/or loss of prospects of marriage) and loss of expectation of life.

7. Assessment of pecuniary damages under Item (i) and under Item (ii)(a) do not pose much difficulty as they involve reimbursement of actuals and are easily ascertainable from the

evidence. Award under the head of future medical expenses—Item (iii)—depends upon specific medical evidence regarding need for further treatment and cost thereof. Assessment of non-pecuniary damages—Items (iv), (v) and (vi)—involves determination of lump sum amounts with reference to circumstances such as age, nature of injury/deprivation/disability suffered by the claimant and the effect thereof on the future life of the claimant. Decisions of this Court and the High Courts contain necessary guidelines for award under these heads, if necessary. What usually poses some difficulty is the assessment of the loss of future earnings on account of permanent disability—Item (ii)(a). We are concerned with that assessment in this case."

Assessment of future loss of earnings due to permanent disability

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 accident 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 ("the 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.

9. The percentage of permanent disability is expressed by the doctors with reference to the whole body, or more often than not, with reference to a particular limb. When a disability certificate states that the injured has suffered permanent disability to an extent of 45% of the left lower limb, it is not the same as 45% permanent disability with reference to the whole body. The extent of disability of a limb (or part of the body) expressed in terms of a percentage of the total functions of that limb, obviously cannot be assumed to be the extent of disability of the whole body. If there is 60% permanent disability of the right hand and 80% permanent disability of left leg, it does not mean that the extent of permanent disability with reference to the whole body is 140% (that is 80% plus 60%). If different parts of the body have suffered different

percentages of disabilities, the sum total thereof expressed in terms of the permanent disability with reference to the whole body cannot obviously exceed 100%.

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, the 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.

11. What requires to be assessed by the Tribunal is the effect of the permanent 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 the 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.

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.

13. Ascertainment of the effect of the permanent disability on the actual earning capacity involves three steps. The Tribunal has to first ascertain what activities the claimant could carry on in spite of the permanent disability and what he could not do as a result of the permanent disability (this is also relevant for awarding compensation under the head of loss of amenities of life). The second step is to ascertain his avocation, profession and nature of work before the accident, as also his age. The third step is to find out whether (i) the claimant is totally disabled from earning any kind of livelihood, or (ii) whether in spite of the permanent disability, the claimant could still effectively carry on the activities and functions, which he was earlier carrying on, or (iii) whether he was prevented or restricted from discharging his previous activities and functions, but could carry on some other or lesser scale of activities and functions so that he continues to earn or can continue to earn his livelihood.

14. For example, if the left hand of a claimant is amputated, the permanent physical or functional disablement may be assessed around 60%. If the claimant was a driver or a carpenter, the actual loss of earning capacity may virtually be hundred per cent, if he is neither able to drive or do carpentry. On the other hand, if the claimant was a clerk in government service, the loss of his left hand may not result in loss of employment and he may still be continued as a clerk as he could perform his clerical functions; and in that event the loss of earning capacity will not be 100% as in the case of a driver or carpenter, nor 60% which is

the actual physical disability, but far less. In fact, there may not be any need to award any compensation under the head of "loss of future earnings", if the claimant continues in government service, though he may be awarded compensation under the head of loss of amenities as a consequence of losing his hand. Sometimes the injured claimant may be continued in service, but may not be found suitable for discharging the duties attached to the post or job which he was earlier holding, on account of his disability, and may therefore be shifted to some other suitable but lesser post with lesser emoluments, in which case there should be a limited award under the head of loss of future earning capacity, taking note of the reduced earning capacity.

15. It may be noted that when compensation is awarded by treating the loss of future earning capacity as 100% (or 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 have to be awarded under the head of loss of amenities or loss of expectation of life, as otherwise there may be a duplication in the award of compensation. Be that as it may.

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 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, Manual for Evaluation of Permanent Physical Impairment for Orthopaedic Surgeons, prepared by American Academy of Orthopaedic Surgeons or its Indian equivalent or other authorised 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.

18. The Tribunal should also act with caution, if it proposed to accept the expert evidence of doctors who did not treat the injured but who give "ready to use" disability certificates, without proper medical assessment. There are several instances of unscrupulous doctors who without treating the injured, readily give liberal disability certificates to help the claimants. But where the disability certificates are given by duly constituted Medical Boards, they may be accepted subject to evidence regarding the genuineness of such certificates. The Tribunal may invariably make it a point to require the evidence of the doctor who treated the injured or who assessed the permanent disability. Mere production of a disability certificate or discharge certificate will not be proof of the extent of disability stated therein unless the doctor who treated the claimant or who medically examined and assessed the extent of disability of the claimant, is tendered for cross-examination with reference to the certificate. If the Tribunal is not satisfied with the medical evidence produced by the claimant, it can constitute a Medical Board (from a panel maintained by it in consultation with reputed local hospitals/medical colleges) and refer the claimant to such Medical Board for assessment of the disability.

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 the percentage of loss of earning capacity is the same as the 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 to 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."

13. In view of the aforesaid discussion, core point for determination arises in this appeal as to whether the impugned award requires reassessment of compensation amount as per established principles of law?

14. In the instant case, there is no dispute that the appellant is a practicing lawyer who was examined as PW-2, has categorically deposed that while he was returning from his scooter to his home, meanwhile a Maruti car bearing WB-13L-4383 coming from opposite direction dashed in his scooter due to which thigh bone of right leg was fractured and he also sustained injuries on several parts of the body. At first, he was admitted to central hospital where he got treatment from 26.01.2003 to 29.04.2003. Thereafter, he was referred to higher center and he has undergone operation on 30.04.2003 at Pandit Clinic and steel rod was fitted. Again he

was admitted on 29.10.2003 for bone grafting. He is still undergoing treatment as outdoor patient. He completely stayed bed ridden about one year and one month. Further, the claimant/appellant has also spent more than Rs.2 lakhs in his treatment and still one operation is due. At the time of said accident, he was 43 years old and by occupation is a practicing lawyer and he earns Rs.14,000/- per month and also pay income tax.

15. It is also stated that due to above injuries and operation he lost flexibility in his right leg which does not fold and he walks with the help of armlets. He also feels inconvenience while discharging natural call and he is practicing at Dhanbad Civil Court and appears in all courts situated in six buildings but due to accident, he could not conveniently attend all the courts. His income has considerably been reduced and his claim for Rs.17 lakhs as compensation is absolutely genuine and reasonable.

The claimant was cross-examined by the defendants but as regards his injuries and operation and monthly income as well as profession as a practicing advocate at Dhanbad Civil Court has not been rebutted by the respondents/defendants rather he has reiterated that his monthly income is of Rs.14,000/-. It is also admitted that he can produce income tax assessment form, if required by the court. It is also not denied that claimant is still undergoing medical treatment and due to his physical disability he has considerably impaired his income and frequent movement.

16. It appears that learned tribunal while deciding the income of the claimant failed to take into notice the evidence on oath of the claimant and there was no rebuttal evidence from opposite parties to cast any doubt in respect of monthly income of the claimant. Learned tribunal on his own accord conjectured about the monthly income of the claimant reduced it to Rs.9,000/- in place of Rs.14,000/- as claimed without any cogent reasons merely on the ground of absence of documentary proof of income the un-rebutted sworn testimony of a witness can not be disbelieved. Moreover, the practicing lawyer of more than 12 years, practice

may easily earn Rs.14,000/- per month. As such, the findings of learned tribunal as regards monthly income of the appellant is based on extraneous consideration and beyond the weight of evidence available on record. Accordingly, monthly income of the appellant at the time of alleged accident is considered to be Rs.14,000/- per month. It is also admitted fact that the appellant was 43 years old on the date of accident. It is also admitted position that the appellant has undergone operation of hip joint by putting steel rod and sustained 48 % permanent disability of lower limb of right leg and still unable to discharge his normal pursuit of life without help of armlets.

17. PW 5, Dr. Vijay Pratap Sinha, who is one of the members of Medical Board cum Assistant Professor Orthopedist, PMCH, Dhanbad, has proved the Ext.4 Disablement/Handicapped certificate, and testified that on 25.06.2015, he was one of the member of handicapped board constituted under the chairmanship of Civil Surgeon-cum-CMO, Dhanbad at his office where we had examined Gautam Kumar Banarjee, s/ Late Kishori Mohan Banarjee, aged 54 years at that time. He had physically handicapped due to post-traumatic and ankylosis right-knee the percentage of handicapped in his case 48% permanent.

This witness has not been cross-examined effectively by any of the defendants/respondents rather he reiterates that disability of Gautam Kumar Banarjee was 48% permanent in nature.

In view of above, the plea of respondents that the disablement certificate of the claimant was not properly proved can not be entertained.

18. The loss of earning capacity could not be equated with percentage of disablement as has been applied by the learned tribunal in this case. It is admitted by the appellant that he is still practicing as an advocate at Civil Court of Dhanbad but could not appear in all courts situated in six buildings without support of the armlets which has substantially decreased his efficiency. In the aforementioned circumstances the future loss of earning capacity of the appellant may be assessed to the extent of 40%.

18. In view of the above discussions and reasons, the assessment of compensation amount is calculated in the following tabular chart:-

Sl. No.	Particulars	Amount (In Rs.)
1.	Loss of earning during the period of treatment for one year and one month= (14,000 x 13)	1,82,000/-
2.	Loss of future earing on account of disability(40% of the annual income)= [(1,68,000x40/100) x14]	Rs.9,40,800/-
3.	Expenditure incurred towards the medical treatment (based on medical bills)	Rs.55,732/-
4.	Special diet	Rs.25,000/-
5.	Conveyance/transportation	Rs.10,000/-
6.	Loss of amenities of life	Rs.1,00,000/-
7.	Loss of expectation of life	Rs.25,000/-
8.	Pain & Suffering and future cost of treatment	Rs.1,50,000/-
	Total-	Rs.14,88,532/-

19. The learned tribunal has awarded 6 % interest per annum on the awarded amount excluding the period from 26.02.2015 to 18.01.2017 due to dismissal of the claim petition for default and its restoration also does not stand to reason because the restoration of claim petition relates back to the date of its institution and is allowed after showing reasonable cause which prevented the applicant from effective prosecution of the case. As such in my considered view the awarded amount of Rs.14,88,532/- shall carry an interest @ 6 % per annum from the date of institution of the claim petition till the date of actual payment. Any amount earlier paid by the respondent No.2 as per Award of the learned tribunal

shall be deducted and rest of amount shall be paid with interest as above within 8 weeks from the date of this order.

20. In view of the above discussion and reasons, this appeal is allowed. The impugned award is hereby set aside and modified to the extent mentioned above.

(Pradeep Kumar Srivastava, J.)

High Court of Jharkhand, Ranchi
Pappu/A.F.R.