

# Jithendran vs The New India Assurance Co. Ltd. on 27 October, 2021

**Equivalent citations: AIRONLINE 2021 SC 946**

**Author: Hrishikesh Roy**

**Bench: Hrishikesh Roy, R. Subhash Reddy**

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 6494 OF 2021  
(Arising out of SLP (C) No.13213 OF 2019)

JITHENDRAN

[REDACTED] APPELLANT

VERSUS

THE NEW INDIA ASSURANCE CO. LTD. & ANR

RESPONDENT

## J U D G M E N T

Hrishikesh Roy, J.

1. Heard Mr. A. Karthik, learned counsel for the appellant (claimant). Mr. JPN Shahi, learned counsel appears for the insurance company (respondent no1).

2. Leave granted. This appeal arises out of a motor accident claim following the serious injuries suffered by the appellant on 13.4.2001 when the motor cycle (where the appellant was riding pillion), was hit by a car. Both riders were impacted, resulting in severe head injuries to the appellant. He was bedridden, totally immobilized and initially, remained admitted in the hospital for 191 days. The appellant has also suffered severe impairment of cognitive power with hemiparesis and total aphasia and the prognosis for him is 69% permanent disability.

3. The claim filed by the pillion riding appellant was analogously considered with other claimants from the same accident, by the Motor Accident Claims Tribunal, Thrissur (hereinafter referred to as, 'the Tribunal' for short). The Presiding Officer noticed that the severely impaired pillion rider needed support of two persons, holding him from either side and because of his diminished cognitive facilities, the claimant appeared to be oblivious to his surroundings before the Tribunal. He could only partially close his mouth and consequently saliva dribbled from his mouth. The Tribunal judge noted that the claimant was 21 years old and was earning around Rs.4,500/- per

month from jewellery work when he suffered the accident. Considering these factors and applying the multiplier of 17, the payable compensation for the pillion rider was determined as Rs.5,74,320/- by the Tribunal.

4. Dissatisfied with the awarded sum, the claimant moved the High Court of Kerala for higher compensation. With court's permission, the claimant produced three discharge summaries, 40 medical bills (totalling Rs.68,196/-) and 3 medical reports issued by the hospital where the partially disabled claimant received further treatment. Those were considered together with the fact that Rs. 4,500/- p.m. was the earning of the claimant as a jewellery worker for which, 40% as future prospect needed to be added. The additional medical expenses incurred for further treatment after the initial 191 days of hospitalization was taken into account and, towards future treatment, Rs.1,00,000/- was added. The nature of permanent disability of 69% was then factored in under the relevant head and the High Court quantified a higher sum of Rs.9,38,952/- (instead of Rs.2,81,520/-) as compensation. Thus additional compensation for permanent disability to the tune of Rs.8,57,432/- was quantified by the High Court, beyond the Rs.5,74,320/- determined by the Tribunal for the pillion rider.

5. The chart below would indicate the compensation quantified by the Tribunal and the High Court, under different heads:

Head	Tribunal	High Court
Loss of earning	12,000/-	12,000/-
Expense for transportation	10,000/-	10,000/-
Extra-nourishment	10,000/-	10,000/-
Damage to clothing	500/-	500/-
Expenses for treatment	1,40,300/-	1,40,300/-
Expense for bystander	50,000/-	50,000/-
Compensation for pain and suffering	50,000/-	1,00,000/-
Compensation for permanent disability	2,81,500/-	9,38,952/-
Loss for loss of amenities	20,000/-	70,000/-
Future medical expenses	NIL	1,00,000/-
Total	5,74,320/-	14,31,752/-

6. The learned counsel Mr. A. Karthik for the

appellant underscores that the claimant has suffered 69% permanent disability and is unable to perform everyday activities and he requires constant support even for the confined life that he is leading. Accordingly earnest plea is made for adding expenses for service of bystander/attendant for the severely impaired claimant.

6.1 Since additional recurring medical exigencies are necessitated and expenses are incurred for regular medical treatment even after the accident, based upon the bills and hospital documents produced before the High Court, the appellant's counsel argues for substantial enhancement of the

sum awarded under the head of future medical expenses.

6.2 Because the appellant's earning capacity is reduced to zero, (notwithstanding his 69% permanent disability), the logic of restricting the compensation to 69% under the head of permanent disability is questioned and Mr. Karthik, the learned counsel submits that the correct figure should be reached by treating it as 100% loss of future earnings.

6.3 Considering the fact that the injured appellant was hospitalized for 191 days and was off work, the lower quantification of his six months loss of earning at Rs.12,000/-, when income is accepted as Rs. 4500/-, is questioned by the appellant's counsel and he argues that the loss of earning should be quantified at Rs.27,000/- (instead of Rs.12,000/-,) under the relevant head.

7. On the other hand, Mr. JPN Shahi, the learned counsel appearing for the Insurance Company submits that when 69% percent permanent disability is suffered, the sum quantified by the High Court at 69% level, requires no enhancement.

7.1 It is further pointed out by the learned counsel that the High Court has already awarded Rs.1,00,000/- towards future medical expenses and the appellant is disentitled to claim any further sum on the said count. 7.2 Insofar as the claim for expenses for a bystander/attendant, the learned counsel submits that no material is produced by the claimant on the actual expenses incurred for service of attendant and accordingly it is argued that no further claim is merited under this head.

8. As earlier noted, the appellant has suffered 69% permanent disability and without assistance, cannot perform everyday functions. The claimant with seriously impaired cognitive and physical capabilities would surely need full time assistance even for the confined life that he is leading. In such circumstances, the disabled claimant cannot be expected to rely only upon gratuitous services of his well-wishers and family members. Importantly, the presiding judge in the Tribunal himself noticed that the claimant would require the assistance of a bystander/attendant for all his movements. Consequently, bearing in mind the need for assisted living and what was said in *Kajal vs. Jagdish Chand and Others*<sup>1</sup>, it is found necessary to add the expenses for service of an attendant for the claimant. Since no material is produced to quantify the expenses for the attendant, making a conservative estimate, Rs.5,000/- per month appears to be the bare minimum. It is therefore deemed appropriate to quantify the annual expenses at Rs.60,000/- and applying the multiplier of 18, the additional compensation payable under the bystander head is quantified at Rs.10,80,000/-.

9. The appellant has produced adequate medical documents before the High Court to show the recurring needs for testing, treatment and further hospitalisation for which, considerable expenses were incurred even after the initial 191 days of hospitalization. As a person suffering severe cognitive impairment and 69% disability, recurring medical treatment is inevitable and bearing in mind the additional expenses already incurred, we deem it 1(2020) 4 SCC 413 appropriate to enhance the future medical expenses to Rs.3,00,000/- (from Rs.1,00,000/-), since the sum quantified by the High Court appears to be on the lower side.

10. While the permanent disability as certified by the doctors stands at 69%, the same by no means, adequately reflects the travails the impaired claimant will have to face all his life. The 21 year old's youthful dreams and future hopes were snuffed out by the serious accident. The young man's impaired condition has certainly impacted his family members. Their resources and strength are bound to be stressed by the need to provide full time care to the claimant. For the appellant to constantly rely on them for stimulation and support is destined to cause emotional, physical and financial fatigue for all stakeholders.

11. The Motor Vehicles Act is in the nature of social welfare legislation and its provisions make it clear that the compensation should be justly determined. Justice A.P. Misra in *Helen C. Rebello and Others v. Maharashtra SRTC and Anr.*<sup>2</sup>, held the following on the contours of 'just' compensation, "The word 'just', as its nomenclature, denotes equitability, fairness and reasonableness having a large peripheral field. The largeness is, of course, not arbitrary; it is restricted by the conscience which is fair, reasonable and equitable, if it exceeds; it is termed as unfair, unreasonable, unequitable, not just." A person therefore is not only to be compensated for the injury suffered due to the accident but also for the loss suffered on account of the injury and his inability to lead the life he led, prior to the life-altering event. Justice D.Y. Chandrachud speaking for a three judges' bench in *Jagdish Vs. Mohan and others*<sup>3</sup> makes the following relevant observation on the intrinsic value of human life and dignity that is attempted to be recognised, through such compensatory awards, "...the measure of compensation must reflect a genuine attempt of the law to restore the dignity of the being. Our yardsticks of compensation should not be so abysmal as to lead one to question whether our law values human life. If it does, as it must, it must provide a realistic recompense for the pain of loss and the trauma of suffering. Awards of compensation are not law's doles. In a discourse of rights, they constitute entitlements under law."

12. The Courts should strive to provide a realistic recompense having regard to the realities of life, both in terms of assessment of the extent of disabilities and its impact including the income generating capacity of the claimant. In cases of similar nature, wherein the claimant is suffering severe cognitive dysfunction and restricted mobility, the Courts should be mindful of the fact that even though the physical disability is assessed at 69%, the functional disability is 100% in so far as claimant's loss of earning capacity is concerned.

13. The extent of economic loss arising from a disability may not be measured in proportions to the extent of permanent disability. This aspect was noticed in *Raj Kumar Vs. Ajay Kumar and Anr.*<sup>4</sup>, where Justice R.V. Raveendran made the following apt observations:

"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 shows 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 4(2011)<sup>1</sup> SCC 343 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.”

14. The test for determining the effect of permanent disability on future earning capacity involves the following 3 steps as was laid down in Raj Kumar<sup>5</sup> and reiterated by Justice Indu Malhotra in Chanappa Nagappa Muchalagoda vs. Divisional Manager, New India Insurance Company Limited<sup>6</sup>.

“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 5Ibid 6(2020)<sup>1</sup> SCC 796 so that he continues to earn or can continue to earn his livelihood.”

15. The above yardstick to be adopted in such exigencies was reaffirmed by Justice S. Ravindra Bhat in Pappu Deo Yadav vs. Naresh Kumar and others<sup>7</sup>. The following was set out by the three Judges’ Bench:

“13. The factual narrative discloses that the appellant, a 20-year-old data entry operator (who had studied up to 12th standard) incurred permanent disability, i.e. loss of his right hand (which was amputated). The disability was assessed to be 89%. However, the tribunal and the High Court re- assessed the disability to be only 45%,

on the assumption that the assessment for compensation was to be on a different basis, as the injury entailed loss of only one arm. This approach, in the opinion of this court, is completely mechanical and entirely ignores realities. Whilst it is true that assessment of injury of one limb or to one part may not entail permanent injury to the whole body, the inquiry which the court has to conduct is the resultant loss which the injury entails to the earning or income generating capacity of the claimant. Thus, loss of one leg to someone carrying on a vocation such as driving or something that entails walking or constant mobility, results in severe income generating impairment or its extinguishment altogether. Likewise, for one involved in a job like a carpenter or hairdresser, or machinist, and an experienced one at that, loss of an arm, (more so a functional arm) leads to near extinction of income generation. If the age of the victim is beyond 40, the scope of rehabilitation too diminishes. These individual factors are of 7(2020) SCC Online 752 crucial importance which are to be borne in mind while determining the extent of permanent disablement, for the purpose of assessment of loss of earning capacity.” “20. Courts should not adopt a stereotypical or myopic approach, but instead, view the matter taking into account the realities of life, both in the assessment of the extent of disabilities, and compensation under various heads. In the present case, the loss of an arm, in the opinion of the court, resulted in severe income earning impairment upon the appellant. As a typist/data entry operator, full functioning of his hands was essential to his livelihood. The extent of his permanent disablement was assessed at 89%; however, the High Court halved it to 45% on an entirely wrong application of some ‘proportionate’ principle, which was illogical and is unsupportable in law. What is to be seen, as emphasized by decision after decision, is the impact of the injury upon the income generating capacity of the victim. The loss of a limb (a leg or arm) and its severity on that account is to be judged in relation to the profession, vocation or business of the victim; there cannot be a blind arithmetic formula for ready application. On an overview of the principles outlined in the previous decisions, it is apparent that the income generating capacity of the appellant was undoubtedly severely affected. Maybe, it is not to the extent of 89%, given that he still has the use of one arm, is young and as yet, hopefully training (and rehabilitating) himself adequately for some other calling. Nevertheless, the assessment of disability cannot be 45%; it is assessed at 65% in the circumstances of this case.”

16. As noted earlier, the impact on the earning capacity for the claimant by virtue of his 69% disability must not be measured as a proportionate loss of his earning capacity. The earning life for the appellant is over and as such his income loss has to be quantified as 100%. There is no other way to assess the earning loss since the appellant is incapacitated for life and is confined to home. In such circumstances, his loss of earning capacity must be fixed at 100%. As his monthly income was Rs.4,500/-, adding 40% future prospect thereto, the monthly loss of earning is quantified as Rs.6,300/-. We therefore deem it appropriate to quantify Rs.13,60,800/- (Rs.6,300 x 12 x 18) as compensation for 100% loss of earning for the claimant. Accordingly, under this head, the amount awarded by the High Court is enhanced proportionately.

17. The lesser amount for 6 months earning loss during hospitalization, must also be corrected. The claimant was awarded Rs.12,000/- for his hospitalization in the aftermath of the accident. But the lower figure does not correctly correspond to six months loss, when the income was Rs. 4500/- p.m. Accordingly, the amount under this head is corrected as Rs.27,000/- (Rs.4,500 x

6).

18. Following the above conclusion, additional compensation is found merited for the appellant and the same is ordered. The payable amount under the four specific heads is indicated as under:

S No	Head	Amount claimed
1.	Expense for bystander	Rs.10,80,000/-
2.	Future Medical Expenses	Rs.3,00,000/-
3.	Compensation for permanent disability and loss of earning power	Rs.13,60,800/-
4.	Loss of earning	Rs. 27,000/-
5.	Total	Rs.27,67,800/-

The above quantified sum should be paid by the first respondent, within six weeks from today. Any

amount paid earlier under these heads, may be adjusted during payment to the appellant. It is ordered accordingly.

19. Before parting, it needs emphasizing that in cases such as this, the Tribunal and the Courts must be conscious of the fact that the permanent disability suffered by the individual not only impairs his cognitive abilities and his physical facilities but there are multiple other non-quantifiable implications for the victim. The very fact that a healthy person turns into an invalid, being deprived of normal companionship, and incapable of leading a productive life, makes one suffer the loss of self-dignity. Such a Claimant must not be viewed as a modern day Oliver Twist, having to make entreaties as the boy in the orphanage in Charles Dickens's classic, "Please Sir, I want some more". The efforts must be to substantially ameliorate the misery of the claimant and recognize his actual needs by accounting for the ground realities. The measures should however be in correct proportion. As is aptly said by Justice R.V Raveendran, while speaking for the Division Bench in Sarla Verma and Others Vs. Delhi Transport Corporation and Another<sup>8</sup>, just compensation is adequate compensation and the Award must be just that- no less and no more. The plea<sup>8</sup> (2009)6 SCC 121 of the victim suffering from a cruel twist of fate, when asking for some more, is not extravagant but is for seeking appropriate recompense to negotiate with the unforeseeable and the fortuitous twists in his impaired life. Therefore, while the money awarded by Courts can hardly redress the actual sufferings of the injured victim (who is deprived of the normal amenities of life and suffers the unease of being a burden on others), the courts can make a genuine attempt to help restore the self-dignity of such claimant, by awarding 'just compensation'.

20. With the above observation and enhancement of compensation, the claimant's appeal stands allowed. The impugned judgment of the High Court stands modified to the extent indicated above. The parties to bear their respective cost.

... .. J . [ R . S U B H A S H R E D D Y ]  
.....J. [HRISHIKESH ROY] NEW DELHI OCTOBER 27, 2021