**The Need of Shifting Towards Functional Disability Certification**

**Abstract**

The article intends to address common problems faced by Persons with disabilities. Disability Certificates are issued by doctors, most of whom are not well-versed with the implications of issuing such certificates. Well-intended certificates issued to Persons with disabilities are a reason for bewilderment for the legal system as the judiciary and the medical fraternity approach disability differently. Persons with disabilities need to approach Claims Tribunals’ to seek compensation in cases where the reason for the impairment is an accident. The courts assess functional disability to arrive at a sum to compensate the disabled person and do not merely rely on the impairment mentioned in the disability certificate issued by the medical board. Functional disability assessment at the level of courts is more in line with the Bolitho system. Changes discussed in the paper align with the right mix of the Bolam and the Bolitho systems.

**Key Words:** Disability, Impairment, Persons with Disability.

**Introduction**

Disability is esoteric with its evolving and multi-faceted nature. The concept of disability remains debatable with some proponents espousing for a greater share of the medical aspect, while others focusing on the social aspect. In the recent past, the disabled people’s movement [1] with “world report on disability” provided the impetus to many researchers from the field of humanities [2] to highlight the role of social and physical barriers in disability. The transition from an individual, medical perspective to a structural and social perspective was a sea change from the earlier “medical model” to a “social model” wherein people are seen disabled by society instead of their bodily impairments [3]. The social approach alone was not sufficient in explaining disability as it did not take into account problems such as urinary tract infections and pain that cannot be accounted for solely by social barriers. The medical model was missing out on environmental factors such as architectural barriers, societal attitudes, etcetera. The biopsychosocial was successful in achieving this balance. A balanced approach that takes into account both the ‘medical’ and the ‘social’ models with appropriate weightage to the various aspects of disability is needed. [4-7]. The concept of disability outlined in the world report understands functioning and disability as a dynamic interaction between health conditions and contextual factors, which include personal and environmental factors. Disability changes with changes in the medical condition, or the context in which the person with that medical condition living changes [5]. This in-depth article seeks to outline the basic features of “Disability Certification” and the thorny issues surrounding the subject matter, to assess the problems with disability certification and the subsequent compensation awarded in cases of motor vehicle accidents leading to injury. (**figure 1**)

**Disability Certification Jargon**

The RPWD Act of 2016 outlines the process of disability certification. These certificates contain a lot of medical and legal jargon that is difficult to understand by the population at large. Medical phrases can be hard to understand by the members of the legal fraternity, whereas legal jargon is difficult for people without special training in this subject to comprehend in the field of Medicine.

The percentage of permanent physical impairment is expressed by the doctors with reference to more often than not, a selected limb. Disability certificates express disability as a percentage of permanent physical impairment. Impairment is used as a surrogate for disability. It is important to note that a disability certificate stating a permanent physical impairment to an extent of 45% of the left lower limb, is not an equivalent of 45% permanent physical impairment with respect to the entire body. Another point that needs to be emphasized is that if there is a 60% permanent physical impairment of the right upper limb and 80% permanent physical impairment of the left lower limb, the extent of permanent physical impairment with respect to the entire body is not 140% (that is 80% + 60%). The sum of permanent physical impairment cannot exceed 100% in any case. This is one example of how the court may get misled by the certificate issued and it calls for a more uniform depiction of the share of the incapacity [8-10]. (**figure 2**)

**The need for exactitude in disability certification**

The Motor Vehicles Act 1988 makes it clear that the compensation awarded should be such that it restores the claimants' position prior to the accident to the accident fully and adequately. This would tantamount to “just” compensation. [11] The basic purpose of awarding damages is to minimize the loss suffered as a result of wrong done, to the extent that money can do. A few conjectures with reference to the nature of the disability and its consequences are inevitable, however, the tribunals need to attempt to arrive at the damages as objectively as possible and make an attempt to exclude any speculation or fancy. The individual needs to be compensated for both the physical injury and its consequences such as an inability to lead a full life, his inability to earn as much as used to earn, or, had the potential to earn in the future. Award of the degree of permanent physical impairment varies hugely between one medical board to another, and this leads to arbitrariness. (**figure 3**)

**The unintended unfairness even within the medical model**

A commonly used test is the Medical Research Council (MRC) grading of power: A clinician may rate the strength of a muscle group as 4/5, and another one may differ and may consider it 5/5 as there is inherent subjectivity in the grading. Scoring is subjective based on the examiners' perception. There is variability between examiners for the maximal resistance they are able/wish to apply. The test does not account for musculoskeletal problems, that may make testing painful or difficult to tolerate. Examples of such patients include patients with tendinopathy or arthritis. The test depends on patient effort, which can be weaker in some patients. The reasons may be pain, improper comprehension of instructions, psychological causes, or secondary gain. Finally, the grading system classifies the strength level but doesn't directly quantify strength [12].

Ideally, mapping of the somatosensory system should be using Quantitative sensory testing (QST) [13]. This test is psychophysical. Cooperation of the patient is needed. Its shortcomings include the time required to produce accurate and reproducible thresholds of sensation. However, this is currently not in use by the medical boards.

**Case Studies**

**Case 1**: In the case of Purshotam Das vs New India Asso. Co. Ltd. & Ors. The appellant challenged the award of the claims tribunal whereby compensation of rupees 1,55,000/- was awarded. The appellant sought an enhancement of the compensation awarded. The appeal was allowed and the amount enhanced to rupees 3,30,000/-. (**Figure 4**)

**Case 2**: The appellant in the case of Anant versus Pratap filed a claim of Rupees 20,00,000 against the owner of the Maruti Car and the Insurance company after he sustained injuries in an accident. The Tribunal awarded 700,000 as a lump-sum amount. The appellant was not satisfied by the method used for awarding compensation and filed First Appeal u/s. 173 of the M.V. Act for enhancement of compensation before the High Court. The High Court allowed the Appeal and enhanced the compensation to Rupees. 14,65,500 with 9% Interest p.a. from the date of application until realization. The High Court was of the view that the multiplier method needs to be used. Rupees 20,29,000 (Rupees Twenty Lakhs Twenty-Nine Thousand Only) along with Simple Interest at 9% p.a. from the date of the application made before the MACT till the date of payment from both the Respondents after he challenged the judgment of the High Court by way of the present Appeal by Special Leave Petition in the Supreme Court of India. The reasons for the enhancement were that the income of the appellant settled after an argument, the loss of present income is taken into account, the loss of future income is taken into account, the reimbursement of Medical expenses is considered, attendance and conveyance charges, charges with respect to special diet and nutrition, loss of amenities in future life, and pain and suffering were accounted for. (**Figure 5**)

**Case 3**: In the case of Anil Kumar versus Vijay Kumar; the court on the basis of past judgments arrived at a functional disability to the extent of 70% while the physical impairment awarded by the board was 70% in relation to the left lower limb. He was subsequently awarded 18,08,936 as compensation. (**Figure 6**)

**Case 4:** In the case of Rekha Jain vs National Insurance Co.Ltd. & Ors; The medical board arrived at a permanent disability of 30%. However, on account of her vocation which was acting and modelling and in view of disablement of the face, the functional disability was 100% by the Supreme Court of India. (**Figure 7**)

Compensation: pecuniary and non-pecuniary losses and the relation to functional disability

Entitlement to pecuniary as well as non-pecuniary damages remains well-settled while granting compensation to cases with an injury [14].

In the case of Common Cause, A Registered Society versus the Union of India, AIR 1999 SC 376, the Honourable Supreme Court held that compensating the victim is the best that a court can do, but there exists no replacement for non-pecuniary losses. The compensation for non-pecuniary losses is only a substitute. The same was held by McGregor also. On the other hand, pecuniary losses or “damages” can be calculated arithmetically. The court bases the compensation on pecuniary and non-pecuniary losses. (**Table 1/Figure 8**)

**Recommendation**

1. Functional disability evaluation should be done by the medical board as per the International Classification of Functioning, Disability and Health (ICF), before the court calls an expert for cross-examination. This is likely to lead a much more accurate calculation of the functional disability, and subsequently the compensation awarded. The present system in such cases is as per the concept of “Bolitho”; The proposed system brings a balance between the concept of Bolam and Bolitho.

**2.** This process can be advanced to the stage of certification at the level of the board by using ICF and, subsequently, the arguments challenging functional disability are likely to be more fruitful if it has been assessed initially rather than assessing the simple percentage of physical impairment with respect to a body part or the whole body.

**3.** ICF can be used to for functional assessment. To make the process even fairer, we propose the use of Artificial Intelligence (AI) for creating a weighted functioning profile as the number of parameters increase.

**Conclusion**

A substantial number of this population requires a disability certificate to avail of the benefits. The system of disability certification begins at the level of medical boards that assign a percentage of permanent physical impairment and ends up in long-drawn courtroom battles as the court decides on the amount of compensation with respect to functional disability. To say the least, this is a highly subjective process with many people being short-changed due to inaccuracies at any level of this process. The system has to be improved in order to provide just compensation to persons with disabilities.

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