



**Non-Reportable**

**IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION**

**CIVIL APPEAL NO. \_\_\_\_\_ OF 2025  
(@ Special Leave Petition (C) No. \_\_\_\_\_ of 2025)  
(@Diary No. 20941 OF 2023)**

**KANUBHAI GOKALBHAI BARIYA      ...APPELLANT**

**VERSUS**

**JAYDIPSINH GOPALSINH  
PAREKHIYA & ORS.      ...RESPONDENTS**

**J U D G M E N T**

**K.VINOD CHANDRAN, J.**

1. Leave granted.
2. The appellant while travelling pillion in a bike met with an accident when a bus rammed into the bike, killing the driver of the bike and seriously injuring the appellant. The right leg of the appellant was amputated, below the knee and the right hand was also deformed from the injuries sustained. The appellant before the Tribunal sought a total compensation of Rs.35,00,000/-, asserting a salary of Rs. 12,000/- per month as a

watchman, which employment he was not able to continue after the accident, due to the amputation.

3. The Tribunal found contributory negligence on the bike driver which was apportioned @ 20% while the bus driver was found to be more negligent @ 80%. The Tribunal found that the income of the injured as per the documents produced clearly indicated Rs.9,918/- which was adopted for the purpose of deciding the loss of income which also was of a permanent nature due to the permanent physical disability suffered. The Tribunal relied on ***Raj Kumar v. Ajay Kumar***<sup>1</sup>, to find 55% functional disability, for payment of Rs. 50,000/- and the income loss for 2 months was assessed at Rs. 20,000/-. The medical bills coming to a total of Rs. 5,17,850/- was allowed with an additional amount of Rs. 10,000/- for special diet. The total compensation awarded by the Tribunal came to Rs.16,34,650/- with interest @ 9% per annum. The Tribunal directed the insurer of the bike and

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<sup>1</sup> (2011) 1 SCC 343

bus to compensate the petitioner respectively in a ratio of 20:80.

4. The High Court in the appeal granted 40% increase in the income as has been held in ***Pranay Sethi***<sup>2</sup>. Actual loss of income was calculated for 6 months with the future prospects included. According to us, that may not be correct since 40% increase is to take in the future prospects of the injured and as on the date of accident when the income is proved, the loss of income should be based on the income proved before the Tribunal. We are conscious of the fact that the Insurance Company is not before us but since just compensation is to be paid, we reduce the same to Rs. 60,000/- for 6 months.

5. As far as the loss of future income is concerned, the Tribunal and the High Court adopted 55% as the disability. The learned Counsel appearing for the appellant would contend that he was working as a watchman and considering the amputation, his disability

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<sup>2</sup> (2017) 16 SCC 680

would be 100%. The appellant's counsel would also seek for increase in the other heads including that for pain and suffering.

6. **Raj Kumar<sup>1</sup>** found that the disability assessed for determining compensation should be the functional disability. In the present case the physical disability of the appellant was proved by the evidence of a doctor who examined him and assessed his physical disability. The certificate proved by the doctor clearly indicated 80% disability with respect to his amputated leg and 10% disability insofar as the deformed right hand. The doctor had clearly deposed that the stump of the right leg was also deformed and there was no possibility of using an artificial limb. In such circumstances, we are of the opinion that the disability of the appellant would be 80% only considering the fact that the appellant could still move on crutches. The appellant had been in hospital for one and a half months and due to the amputation, would have definitely suffered bed rest for some time in the

context of which the High Court has granted 6 months loss of income though the loss of income has been reduced by us. We are of the opinion that the pain and suffering of the appellant has to be increased along with an increase for special diet and attendant charges. The compensation for pain and suffering would be Rs. 1,00,000/- and the attendant charges including special diet for the period when the appellant was hospitalized; which the High Court determined as 6 months, would be @ Rs. 15,000/- per month, thus totalling to Rs. 1,90,000/-. Hence the total compensation is as computed below:

| <b>S. No.</b> | <b>Heads of claim</b>                                           | <b>Amount</b>             |
|---------------|-----------------------------------------------------------------|---------------------------|
| 1.            | Loss of income<br>Rs. 9,818/- x 140% x 12 x 16 x 80%.           | Rs. 21,11,262.72/-        |
| 2.            | Attendant charges and special diet for 6 months @ Rs. 15,000/-. | Rs. 90,000/-              |
| 3.            | Medical Bills.                                                  | Rs. 5,17,850/-            |
| 4.            | Pain and suffering.                                             | Rs. 1,00,000/-            |
| 5.            | Loss of income due to bed-rest for 6 months.                    | Rs. 60,000                |
|               | <b>Total compensation</b>                                       | <b>Rs. 28,79,112.72/-</b> |

7. The above amount shall be apportioned in the ratio of 20:80 as against the insurer of the bike and the bus. The awarded amounts shall be paid within a period of two months from today with interest @ 9% per annum as ordered by the Tribunal and whatever amounts have already been paid shall be deducted. The appellant shall provide the bank account details to the Insurance Companies who shall transfer the amount online within the period specified hereinabove.

8. The Appeal stands allowed with the above directions.

9. Pending application(s), if any, shall stand disposed of.

....., J.  
[SUDHANSHU DHULIA]

....., J.  
[K. VINOD CHANDRAN]

**NEW DELHI;  
MAY 07, 2025.**