

FALLACIES IN CRITERIA FOR ASSESSMENT OF PERMANENT PHYSICAL DISABILITIES IN ROAD TRAFFIC ACCIDENTS

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ABSTRACT

BACKGROUND

Disability and disability certificates are like double-edged swords. On one hand, a non-qualifying individual may avail certain benefits and privileges reserved for disabled person due to over calculation; and on other hand, a deserving disabled may not be able to get benefit out of the granted opportunities due to under calculation. This study was thus undertaken to analyse the disability certificates issued at our institution to determine the fallacies that are evident in the criteria for disability assessment.

METHODOLOGY

500 cases of permanent physical disability (PPD) resulting from road traffic accidents (RTA) satisfying the inclusion and exclusion criteria were re-examined after final assessment of disability and the assessed disability was reviewed in terms of the defect in function of body; the total percentage of disability allotted to the candidate and the appropriateness of the assessed value in relation to the hindrance caused to daily routine.

OBSERVATIONS

No discrepancy was noted in 355 cases, but in rest of 145 cases a number of discrepancies were noted in relation to the above said criteria of comparison. Out of these, in 20% cases, the percentage of disability did not include a note of the total impact of the disability on physical, mental, social life of the disabled person resulting in more non-functioning as compared to the calculated resulting permanent disability. In rest 30% cases with discrepancies, calculated percentage had ill correlation between malfunctioning of the body part and its overall calculation in relation to the body as a whole. Rest 50% cases were those where similar malfunctioning resulting from different lesions was assessed differently resulting in different percentages of permanent physical disabilities.

CONCLUSION

A serious revision of these guidelines in lieu of discrepancies must be ensued to benefit one and all equally and to ensure uniformity in the process which is a gateway to eligibility for public benefit which should be equal to all in a democracy.

KEYWORDS

Permanent Physical Disability, Disability Percentage, Road Traffic Accident.

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INTRODUCTION: Disability certificate enables a disabled person to avail the benefits that have been granted to disabled people to help them to live a life at par with the physically able population. For this purpose, seats are reserved for disabled candidates appearing in exams and in various sectors of employments. Also there are provisions in law for civil awards in accidental cases, rebate in income taxes, facility of compulsory retirement on the ground of incapacity to perform the assigned duty, rebate in the transport fares, awards of partial disability in insurance

sector, pension for disabled person, workmen compensation awards if disability results due to workplace accidents, participation in games for disabled like Para-olympics etc.

Such benefits offered to disabled persons are given only to those who have more than the prescribed level of disability which is calculated in form of percentage (>40%).

However, disability and disability certificates are like double-edged swords. On one hand, a non-qualifying individual may avail certain benefits and privileges reserved for disabled person due to over calculation; and on other hand, a deserving disabled may not be able to benefit out of the granted opportunities due to under calculation.

These discrepancies exist in spite of the fact that uniform guidelines have been formulated for assessment of disability; yet, the allotted disability percentage seems unjust at times.

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This study was thus undertaken to analyse the disability certificates issued at our institution to determine the fallacies that are evident in the criteria for disability assessment along with a correlation of assessed percentage and practical condition of the patient in terms of the deviation from normalcy in practical life in carrying out daily activities and work.

MATERIAL & METHODS: This study was carried out at department of medical board of disabilities of our institution during a one year period from June 2014 to May 2015 after seeking relevant permissions and consent from the patients. During this period, a total of 855 cases of disabilities resulting from road accidents were assessed at the institution out of which 500 cases satisfying the inclusion and exclusion criteria were included in the study. Inclusion criteria were cases of permanent physical disabilities resulting from road accidents where permanent disability certification was achieved during the study period and written informed consent. Exclusion criteria were cases with permanent physical disabilities resulting from causes other than roadside accidents and where permanent disability percentage could not be calculated during the study period.

All information was gathered using a pre-determined proforma. Each case was re-examined after final assessment of disability and the assessed disability was reviewed in terms of the defect in function of body; the total percentage of disability allotted to the candidate, and the appropriateness of the assessed value in relation to the hindrance caused to daily routine. An attempt was also made to compare the resultant disability percentage of either single or multiple body regions issued as per norms to each other in terms of disability prescribed in relation to the amount of malfunctioning. The calculations were carried out in terms of the national guidelines of disability assessment issued by the Government of India.^{1,2} Criterion used for comparison were number of bodily regions involved, assessed percentage of permanent disability in relation to loss of function of part of body and in relation to body as a whole, comparison of loss of function in relation to calculated percentage for different body parts or organ systems. Whatever discrepancies observed were noted and thus, fallacies observed in calculation of permanent physical disabilities percentage were concluded to be considered for suggestions to relevant public authorities.

OBSERVATIONS: Out of the 500 cases, 185 cases were of single body region viz. eyes, upper limbs, lower limbs, etc., and rest 315 cases were those involving more than one bodily region. Cumulatively, 50% cases were of peripheral body parts i.e. upper and lower limbs either involving part itself or due to involvement of central nervous system due to head injuries; 20% cases were those of multiple disabilities resulting exclusively from nervous system impairments; eyes and vision were involved in 12% cases, ears and hearing were involved in 7% cases, 6% cases of spinal disabilities, 4% cases of gastrointestinal disabilities and rest 1% patients presented with permanent psychological impairment.

Amongst them, no discrepancy was noted in 355 cases, but in rest of 145 cases a number of discrepancies were noted in relation to the above said criteria of comparison. Out of these, in 20% cases, the percentage of disability did not include a note of the total impact of the disability on physical, mental, social life of the disabled person resulting in more non-functioning as compared to the calculated resulting permanent disability. In rest 30% cases with discrepancies, calculated percentage had ill correlation between malfunctioning of the body part and its overall calculation in relation to the body as a whole. Rest 50% cases were those where similar malfunctioning resulting from different lesions was assessed differently resulting in different percentages of permanent physical disabilities.

Following Discrepancies were observed in Those Cases:

1. The disability certificates were issued in terms of percentage of loss of function in terms of the part of body involved e.g. 65% disability of function of right upper limb.
2. The disability certificates did not mention the complete impact of disability of the person on his/her day-to-day activities, like work place life, social life, and married life.
3. Certain occupations e.g. medical occupation allows up to 40- 70% of disability in lower limb for admission in medical course, while the disability should be considered in terms of employability of the person, like polio in both limbs may be employable in deskwork, prescribing medicines.
4. Disease processes and removal of organs are not considered while issuing of the disability certificates e.g. splenectomy, operated valvular diseases, removal of one kidney, pathologies resulting from traumatic aetiologies, etc. whereas the physical activity is restricted by nature of these diseases themselves.
5. The distribution and calculation of the permanent physical impairment has been given on the weightage of the limb function inaction, which in our opinion sometimes exceeds the whole limb, e.g. cutting of finger is 30% disability whereas amputation at arm is only 20% disability.
6. The Permanent Physical Impairment is calculated as a percentage in loss of function, there are decisions of honourable courts which have orders to give opinion by medical board separately on total body impact and particular organ or limb function dysfunction. There are no provisions in the available guidelines to calculate them³.
7. The PPI (permanent physical impairment) disability certificate should be made by constituting a medical board which should have one specialist of concerned area of disability. There are different medical boards which are issuing certificates; however, there is no uniform pattern or guidelines regarding constitution

of medical board and inclusion of faculties to give such certificates.

8. Even single doctor's disability certificates are allowed in cases other than road accidents, like availing rebates etc.; which usually mention only that disability is less than or more than 40% without giving full details of the disability.

DISCUSSION: These were all cases of permanent physical disabilities resulting from road accidents and thus the calculated levels of disabilities in terms of percentage were also the basis of the compensation received by the person. Although, this not only depends on the percentage of resultant disability but many other factors too for e.g. hindrance to work, status and earning of individual, number of dependants, age at the time of accident etc. yet, the differences are not justified in terms that it would be one of the basis of compensation awarded and, thus, not advisable to be differently interpretable. These calculations may not just decide the compensations but also serve for future benefits provided by public authorities to permanently disabled persons, which is again not justifiable.

The following points indicate irrationality of criteria used as per World Health Organization (WHO) Guidelines for disability assessment and appear to be unjustifiable.⁴

1. Bladder bowel incontinence is treated as 100% disability even if the person's all 4 limbs are in normal state.
2. The disarticulation at the level of wrist joint is treated as 50% while losses of function of hands are given as 90%.
3. Quadriplegia is given as 90% while paraplegia/ paraparesis is also given as 90%.
4. Paraplegia with bladder bowel incontinence is given as 100%.
5. If four fingers of hand are found amputated, disability is 20% when thumb is intact, while only thumb involvement is given as 30%, while the major work of hand and the skill movements, the role of thumb is more though such type of patients does not come under the category of disability.
6. Above-knee amputation of one side is treated as 90% while bilateral above-knee amputation is also given 90%, but extra point's facility can be given in making it 100%.
7. If patient is in coma and unconscious state without surgical intervention and recovers completely, no disability is given though as per section 320 IPC it comes under the category of grievous injury.
8. As per WHO guidelines, the disability calculated only on the basis of locomotive disability while the internal organs removal affects and congenital diseases calculation criteria has not been narrated.⁴
9. The Apex court of the country has dealt with the subject of assessing disabilities for motor vehicles accident compensation cases in Raj Kumar vs. Ajay Kumar, and concluded that- "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%".⁵ But, no method is available presently to give opinion as asked by Hon'ble court.

10. There are recommendations to give separately the Permanent disability percentage in particular limb and of body as a whole, issued by the office of Chief Commissioner of persons with disabilities³.
11. In case of eye disability in reference to severe myopia, colour blindness has not been given any place which should also be included.
12. The operated heart cases, valvular replacement cases have not been granted any disability if their functions are normal, but the restriction in the day-to-day life and reduction in the capacity is nowhere assessed in the guideline.
13. Eye not functioning - 30% and eye enucleated - 40% disability.
14. The assessment of mental incapacitation is subjective and the assessment may vary from assessor to assessor.
15. Total knee and hip replacement and arthroplasty do not have any criteria in as these implants have chances of infection, loosening, breakage and limitations in terms of time and range of movement of the prosthesis. They cannot replace the originality of the human body but after major surgery and agony, patient is given no disability. This should be reviewed.
16. In psychiatry, less than 40 IQ assessment exact criteria not available to decide how much exact IQ is there.
17. About amputation of penis, there is no disability mentioned.
18. There is no guideline about second medical board examination for disability assessment when one board has given opinion about the disability.

CONCLUSION: The guidelines for assessment of permanent physical disabilities although prepared meticulously still have grey areas to be worked upon and thus, a serious revision of these guidelines in lieu of discrepancies must be ensued to benefit one and all equally

and to ensure uniformity in the process which is a gateway to eligibility for public benefit which should be equal to all in a democracy.

Thus, we conclude that there must be a thorough review of the existing guidelines prescribed for disability assessment in lieu of recent decisions of Hon'ble courts and feedback from doctors all over the country who deal with issuing such certificates and face the fallacious aspects of the guidelines and a revised guideline and protocol must be issued making them more justified and imparting a uniformity to the procedure throughout the country. Also, there must be a consideration of the purpose for which disability percentage is being calculated in the assessment of disabilities and certification by relevant authorities.

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