

The above noted compensation has been granted for having Injuries suffered in a motor vehicle accident which occurred on 26.07.2010.

2. Vide the instant appeal, the appellant is seeking enhancement of the compensation amount.

3. Learned counsel appearing on behalf of appellant submitted that the appellant was assessed having 70% disability by the Disability Board whereas the learned Tribunal has considered 50% disability and, accordingly, awarded the compensation.

4. He further submitted that the appellant is an illiterate person and, was working as a mason . While calculating the loss of future income, Learned Tribunal has considered the salary of Rs.6,448/- per month as minimum wages applicable for skilled person on the date of accident.

5. Learned counsel appearing on behalf of the appellant submitted that learned Tribunal has erred in considering the loss of earning capacity of the appellant as 50% on account of amputation of his right leg below knee. After amputation of his right leg, he would not be able to do the mason work and for any other work he requires a particular skill which he does not have, due to which he would not be able to earn 50% of the salary with one amputated leg. Therefore, the functional disability has to be considered keeping in view the nature of the job.

6. It is submitted, in view of the above, this Court should consider 100% disability as he is no more able to do any mason work.

7. Learned counsel on the above issue has relied upon a case of ***Raj Kumar Vs. Ajay Kumar And Anr., 2011 (1) SCC 343*** wherein the Apex Court has held as under:-

“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, 6 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 accidents 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 ('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.

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, 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. What requires to be assessed by the Tribunal is the effect of the permanently 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 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 (see for example, the decisions of this court in Arvind Kumar Mishra v. New India Assurance Co.Ltd. - 2010(10) SCALE 298 and Yadava Kumar v. D.M., National Insurance Co. Ltd.”

8. Learned counsel for the appellant has argued that learned Tribunal has failed to consider the price index and granted the compensation in favour of the appellant. Keeping in view the age of the appellant and as per the dictum of ***Santosh Devi v. National Insurance Co. Ltd. & Ors. 2012 6 SCC 42***, he is entitled to 30% compensation towards future prospects. Therefore, this Court may grant 30% compensation towards future prospects in favour of the appellant.

9. Learned counsel for the appellant has also relied upon the case of ***Rajesh and Ors. Vs. Rajbir Singh & Ors. 2013 (6) Scale 563*** whereby the Apex Court made it certain amount regarding the compensation on account of future prospects.

10. On the other hand, learned counsel for the respondent submitted that learned Tribunal has considered 50% of his disability keeping in view the disability assessed by the Disability Assessment Board and nature of his job. Even with the right leg amputated below knee, he can

earn 50% of his livelihood as the Tribunal has considered minimum wages of Rs.6,448/- for skilled person.

11. Learned counsel further submitted that if he will not be able to work as a mason, certainly he will earn his livelihood from any other work. Therefore, learned Tribunal has rightly considered 50% of the functional disability.

12. On the issue of future prospects, learned counsel submitted that future prospects are applicable only in case of death and not in case of injury. Moreover, the compensation on account of disability has already been granted on higher side, therefore, there is no scope for grant of future prospects in favour of the appellant. As per the dictum of *Sarla Verma v. DTC and Ors. 2009 (6) SCC 121*, the appellant is not entitled for any compensation towards future prospects.

13 In personal injury cases, the objective of the claims Tribunals and superior courts is to award full and fair compensation while calculating the loss of future income on account of disability suffered by the victim. In the case of **Raj Kumar Vs. Ajay Kumar & Anr. 2011 (1) SCC 343**, the Hon'ble Supreme Court in para 4 held as under:-

“The provision of the Motor Vehicles Act, 1988 ('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 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.”

14. It is proved on record as per Ex.PW-1/5 that the appellant suffered 70% permanent disability in relation to his right lower limb. The disability is a person's inability to execute distinct activities associated with moving himself and moving the objects from place to place. Thus, the appellant could have faced difficulty in moving, walking, climbing, sitting and will continue to face difficulty in performing his job, which would definitely affect his earning capacity.

15. As per the appellant's case, he was 26 years old at the time of the accident and was working as a mason. He was bachelor and enjoying good health.

16. Considering, the age of the appellant and nature of work performed by him, I hold that the learned Tribunal has rightly considered 50% functional disability qua whole body.

17. On the issue of price index, the appellant would be entitled to an addition of 30% towards inflation on the basis of report of the Supreme Court in *Santosh Devi Vs. National Insurance Co. Ltd. & Ors. 2012 (4) Scale 554*.

18. Loss of future earning capacity, thus, comes to Rs.8,54,964/- (6448+30%X12X17X50%).

19. The overall compensation is thus enhanced from Rs.8,51,000/- to Rs.10,47,964/-.

20. The enhanced compensation of Rs.1,96,964/- shall carry interest @ 9% per annum from the date of the filing of the petition till its payment.

21. Accordingly, the respondent Insurance Company is directed to deposit the enhanced amount with Registrar General of this Court within 04 weeks from the receipt of this order failing which the appellant shall be entitled for interest @12% p.a. on the delayed payment.

22. The Registrar General is further directed, on deposit, to release the enhanced amount in favour of appellant on taking necessary steps by him.

23. The appeal is allowed in above terms.

SURESH KAIT, J

JULY 09, 2013

rb/RS