IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 05.08.2015

CORAM

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE M. VENUGOPAL

C.M.A. No.1752 of 2015
and M.P.No.1 of 2015

1. The Director General of Police,
O/o. The Director General of Police of Tamilnadu,
Chennai.

2. The Superintendent of Police,
The State of Tamilnadu,
Armed Reserved Police,
Perambalur District - 621 212. .. Appellants/REspondents

Vs.

Subramanian .. Respondent/Petitioner

Prayer: Appeal under Section 173 of the Motor Vehicles Act, 1988 against the Decree and Judgment passed by the Motor Accidents Claims Tribunal (Principal District Judge), Perambalur in MCOP No.233 of 2012 dated 30.06.2014.

For Appellants : Mr.A.Rajaperumal,
Government Advocate

For Respondent : Mr.T.Gopinath,
for M/s.Royan Law Associates

JUDGMENT

(Order of the Court was made by S.MANIKUMAR, J.)

Challenge in this appeal is to the judgment and decree made in 233 of 2012 dated 30.06.2014 by which the claims tribunal has awarded compensation of Rs.13,51,600/- with interest at the rate of 7.5% per annum, to be paid to the respondent/claimant.

2. Facts of the case, as deduced from the material on record are that on 25.12.2011, when the respondent/claimant was riding a

motorcycle bearing Regn.No.TN46H2574 to go to the new bus stand of Perambalur, about 3.45 pm, at the place just opposite to Karur Vysya Bank, a vehicle viz, TATA SUMO Victa LMV car bearing Regn.No.TN46G0277, owned by the appellants and driven in a rash and negligent manner by its driver, dashed against the motorcycle, resulting in the respondent/claimant sustaining multiple injuries. Motorcycle also sustained damages. In this regard, a case in Cr.No.1193 of 2011, for offence under Sections 279 and 337 IPC, has been registered on the file of Perambalur Police Station. According to the respondent, he sustained multiple grievous injuries all over his body, including left supra orbital region, right zygoma, right pinna, whole length palmer aspect with deformity, bimalleloar fracture in right ankle, right thigh lateral aspect, left foot multiple abrasion, laceration, right clavicle crepitus and deformity present, left frontal temporal lobe and thalamic hameorrhagic contusion and other injuries.

3. Before the claims tribunal, the respondent/claimant has contended that immediately after the accident, he was given first aid in Government Hospital, Peramballur and thereafter, admitted in Retna Global Hospital, Trichy, as inpatient between 25.12.2011 and 24.02.2012. During the abovesaid period, a surgery was performed on 12.01.2012. He continued out patient treatment at the same and other hospitals. He has further contended that on account of the injuries, he became permanently disabled. He has continuous pain in the head and right clavicle bone. He could not lift even light objects. He has further added that the movement in the right hand and fingers are restricted. According to him, he suffered permanent disability. The respondent/claimant has further contended that he was an agriculturist at the time of accident and earned more than Rs.10,000/- per month. Due to the permanent disablement, he has lost his earning capacity. He has incurred considerable medical expenses. He claimed compensation of Rs.15 Lakhs.

4. Before, the claims tribunal, appellants have contended that the accident, did not occur due to the rash and negligent driving of TATA SUMO Victa LMV car bearing Regn.No.TN46G0277. They also submitted that it was the motorcyclist, who was negligent in causing the accident. It is also submitted that the place of accident runs from West to East of the old bus stand to the new bus stand Road, Perambalur. The road at the place of the occurrence is a three road junction. TATA SUMO Victa LMV car bearing Regn.No.TN46G0277 was driven slowly and cautiously on the left side of the road adhering to traffic rules, and near the three road junction, opposite to Karur Vysya Bank, driver of the TATA, noticed the respondent, trying to cross the road suddenly, from north to south and the motorcyclist came to the middle of the road, without noticing TATA SUMO. Driver of the TATA SUMO Victa LMV car bearing Regn.No.TN46G0277 sounded horn and also applied brakes. Inspite of his best efforts, the motorcyclist, due to old age, completely lost his control, fell down and thus caused the accident. Thus, the appellants have denied the

manner of accident. They also disputed the age, avocation, income and the extent of disability assessed by PW.2 & 3, Doctors.

5. Before the claims tribunal, respondent/claimant examined himself as PW1 and reiterated the manner of accident, nature of injuries, period of hospitalisation, extent of disability, medical expenses incurred and marked Ex.P1, xerox copy of First Information Report, Ex.P2, Discharge Summary issued by Retna Global Hospital, Trichy, Ex.P3, Series of Medical bills for Rs.7,950/-, Ex.P4, MRI, Cervical spine report issued by Krishna Advanced MRI & C.T. Trichy, Ex.P5, Xerox copy of Form of certificate of registration relating to the first respondent's vehicle, Ex.P6, Xerox copy of the driving licence relating to the driver of the first respondent, Ex.P7, Series of Medical Bills of Rs.7,73,289.75p, Ex.P8, Discharge summary issued by Retna Global Hospital, Trichy, Ex.P9, Disability certificate issued by Ortho doctor, Ex.P10, X-ray, Ex.P11, Disability certificate issued by Neuro Doctor and Ex.P12, Scan.

6. To prove the nature of injuries, period of treatment, permanent disability suffered on account of the injuries, he has also examined PW2, Dr.Shivaprasath, Neurologist and PW3, Dr.S.Saravanan. Orthopaedist.

7. RW1, is the driver of TATA SUMO Victa LMV car bearing Regn.No.TN46G0277, owned by the appellants. He has denied the manner of accident.

8. On evaluation of pleadings and evidence, the claims tribunal by its judgment and decree in MCOP No.233 of 2012 dated 30.06.2014 held that RW1, alone was negligent in causing the accident. After considering the factors to be taken into consideration for the purpose of awarding compensation to the injured in Motor Accident Claims Cases, the tribunal has awarded compensation of Rs.13,51,600/-, with interest, at the rate of 7.5% per annum, as hereunder.

Loss of earning power and capacity Rs.54,000/- x 62% x 7	= Rs. 2,34,360/-
Partial permanent disability 62% at the rate of Rs.3,000/- per % disability	= Rs. 1,86,000/-
Pain and suffering	= Rs. 50,000/-
Medical expenses as per bills	= Rs. 7,81,230/-
Transport charges	= Rs. 10,000/-
Nutrition	= Rs. 10,000/-
Loss of comforts/amenities	= Rs. 20,000/-
Attender charges	= Rs. 10,000/-
Future medical expenses	= Rs. 50,000/-
Total	= Rs.13,51,590/-

9. Finding of negligence, fixed on RW1, is assailed by the appellant on the grounds inter alia that the claims tribunal, failed

to note that the motorcyclist had no knowledge at all to drive the motorcycle and that the said vehicle was not in a good condition.

10. On the aspect of negligence, it is the case of the respondent/injured, that when he was riding motorcycle on the main road leading to the new bus stand of Perambalur from west to east, at a normal speed, by adhering to the traffic rules and regulations, the vehicle viz., TATA SUMO Victa LMV car bearing Regn.No.TN46G0277, dashed against him. A case in Cr.No.1193 of 2011, for offence under Sections 279 and 337 IPC has been registered against RW1. Oral testimony of PW1, is duly corroborated by Ex.P1, First Information Report. Though, a suggestion has been made during the cross examination of PW1, that he suddenly attempted to cross the road, towards North to go to Christian College, without any signal and thus, invited the accident, he has specifically denied such submission.

11. On the contra, RW1, during the course of cross examination has admitted that FIR was registered against him; that at the time of accident the Inspector of Police, came along with him and he had not lodged any complaint, stating that the FIR was wrong. He has also admitted that the front portion of the car dashed against the two wheeler. Thus, on consideration of both oral and documentary evidence, the claims tribunal came to the conclusion that only due to the rash and negligent act of the driver of the TATA SUMO Victa LMV car bearing Regn.No.TN46G0277, the accident has occurred.

12. While dealing with the scope of the enquiry in the Claims Tribunal, the Apex Court in N.K.V.Brother's Private Limited v. Kurmai [AIR 1980 SC 1354], has held that,

> "Accident Claims Tribunal, must take special care to see that innocent victims do not suffer and drivers and owners do not escape liability merely because of some doubt here or some obscurity there. Save in plaint cases, culpability must be inferred from the circumstances where it is fairly reasonable. The Court should not succumb to niceties, technicalities and mystic maybes. We are emphasising this aspect because we are often distressed by transport operators getting away with it thanks to judicial laxity, despite the fact that they do not exercise sufficient disciplinary control over the drivers in the matter of careful driving."

13. In a decision in Union of India v. Saraswathi Debnath [1995 ACJ 980], High Court of Gauhati has held in Paragraph 6 as follows:

> "The law is well settled that in a claim under the Motor Vehicles Act, the evidence should not be scrutinised in a manner as is done in a civil suit or a criminal case. In a civil case the rule is preponderance of probability and in a criminal case the rule is proof beyond reasonable doubt. It is not necessary to consider these niceties in a matter of accident claim case inasmuch as it is summary enquiry.

> If there is some evidence to arrive at the finding that itself is sufficient. No nicety, doubt or suspicion should weigh with the Claims Tribunal in deciding a motor accident claim case."

14. It is well settled in motor accident claims cases that finding regarding negligence is arrived at by the Claims Tribunal on the principles of preponderance of probability. Strict proof of evidence is not required like that of a criminal case. It is also well settled that the adjudication of claims before the Motor Accident Claims Tribunal is summary in nature. Testing the finding of negligence recorded by the Claims Tribunal, on the above said principles, this Court is of the view that there is no perversity in the finding of negligence, warranting interference and the same is confirmed.

15. On the quantum of compensation, the claims tribunal has considered that the respondent has sustained multiple grievous injuries all over his body, including left supra orbital region, right zygoma, right pinna, whole length palmer aspect with deformity, bimalleloar fracture in right ankle, right thigh lateral aspect, left foot multiple abrasion, laceration, right clavicle crepitus and deformity present, left frontal temporal lobe and thalamic hameorrhagic contusion and other injuries.

16. Upon perusal of the documents Ex.P2, Discharge summary issued by Retna Global Hospital, Trichy, Exs.P3 & P7, series of Medical bills, Ex.P4, MRI & CT Report, Ex.P8, Discharge summary issued by Retna Global Hospital, Ex.P10, X-ray and Ex.P12, Scan, oral testimony of PW1, coupled with the evidence of PW2 & PW3, Doctors, the Claims tribunal came to the conclusion that the respondent/claimant, has sustained severe injuries, which has resulted in disability, assessed by the Doctors at 62%. Evidence of PWs.2 & 3, Doctors considered by the tribunal and extracted at paged 22 and 23 of the impugned judgment are reproduced hereunder.

> "22. PW2, Dr.Shivaprasath, who examined the petitioner on 07.09.2012 deposed that by taking x-ray under Ex.P10, he found fracture and reunion of lower portion of Tibia and Fibula over the right leg; that there was fracture and reunion of centra clavical over left shoulder; that there was fracture and reunion of lower portion of Ulna over left hand; that the petitioner could not do any work as before; that now the petitioner finds it difficult to put cross leg, stand for a long time and walk and climb the stair as before; that now the petitioner finds it difficult to do any work with hi right hand as before; that there was restriction of rotation and movement over the left leg knee; that the petitioner had still pain over the affected portion and that the partial permanent disability is assessed as 40% and that Ex.P9 is the disability certificate issued by him to PW1.

23. Further, PW3, Dr.Mathivanan, Neuro surgeon who examined the petitioner PW1, Subramanian, on 17.09.2012, by taking Scan under Ex.P12, deposed that on verification of the medical records and on examination he found there was contusion over the left side of parietal region; that there was blood oozing out from the Brain; that for reducing the swelling treatment was given; that for natural breathing, an operation was done to the respiratory organ; that since he had sustained injury over the head, he has to suffer side effects; that the petitioner is suffering from head ache, giddiness, sleeplessness and unable to move his right hand and leg and that the partial permanent disability is assessed at 40% and the Ex.P11 is the disability certificate issued by him to PW1."

17. According to the respondent, at the time of accident, he was aged 61 years. As an agriculturist, he earned more than Rs.10,000/-. But, there was no proof. However, there is ample medical evidence to show that the respondent sustained fracture in the head, shoulder, leg and hand, for which, he was hospitalised for a considerable period. Surgery has been performed. Considering the nature of avocation, viz., agriculturist, functional disability in the limbs, would certainly affect an agriculturist, as hands and legs are the tools of such avocation. In such circumstances, there would be loss of future earning capacity. Therefore, on the medical evidence adduced, correlating the functional disability with loss of earning capacity, the claims tribunal cannot be said to have committed any manifest error in applying multiplier method, for the purpose of computing loss of future earning.

18. At this juncture, this Court deems it fit to consider a few decisions on the aspect of awarding compensation towards loss of earning capacity, as well as a separate compensation towards permanent disablement as assessed by the Doctor. In Rajkumar v. Ajay Kumar reported in 2011 ACJ 1 (SC), at paragraphs 4 to 14, the Hon'ble Supreme Court has explained with illustrations, as to how the extent of loss of earning capacity has to be assessed,

"General Principles relating to compensation in injury cases:

4. 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. (See C. K. Subramonia Iyer vs. T. Kunhikuttan Nair - AIR 1970 SC 376, R. D. Hattangadi vs. Pest Control (India) Ltd. - 1995 (1) SCC 551 and Baker vs. Willoughby - 1970 AC 467).

5. The heads under which compensation is awarded in personal injury cases are the following:

Pecuniary damages (Special Damages)

(i) Expenses relating to treatment, hospitalization, medicines, transportation, nourishing food, and miscellaneous expenditure.

(ii) Loss of earnings (and other gains) which the injured would have made had he not been injured, comprising:

(a) Loss of earning during the period of treatment;

(b) Loss of future earnings on account of permanent disability.

(iii) Future medical expenses.

Non-pecuniary damages (General Damages)

(iv) Damages for pain, suffering and trauma as a consequence of the injuries.

(v) Loss of amenities (and/or loss of prospects of marriage).

(vi) Loss of expectation of life (shortening of normal longevity).

In routine personal injury cases, compensation will be awarded only under heads (i), (ii)(a) and (iv). It is only in serious cases of injury, where there is specific medical evidence corroborating the evidence of the claimant, that compensation will be granted under any of the heads (ii)(b), (iii), (v) and (vi) relating to loss of future earnings on account of permanent disability, future medical expenses, loss of amenities (and/or loss of prospects of marriage) and loss of expectation of life. Assessment of pecuniary damages under item (i) and under item (ii)(a) do not pose much difficulty as they involve reimbursement of actuals and are easily ascertainable from the evidence. Award under the head of future medical expenses - item (iii) -- depends upon specific medical evidence regarding need for further treatment and cost thereof. Assessment of non-pecuniary damages - items (iv), (v) and (vi) -- involves determination of lump sum amounts with reference to circumstances such as age, nature of injury/deprivation/disability suffered by the claimant and the effect thereof on the future life of the claimant. Decision of this Court and High Courts contain necessary guidelines for award under these heads, if necessary. What usually poses some difficulty is the

assessment of the loss of future earnings on account of permanent disability - item (ii)(a). We are concerned with that assessment in this case.

Assessment of future loss of earnings due to permanent disability

6. 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, 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.

7. 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%.

8. 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 terns 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. - 2010 (8) SCALE 567).

9. Therefore, the Tribunal has to first decide whether there is any permanent disability and if so the extent of such permanent disability. This means that the tribunal should consider and decide with reference to the evidence: (i) whether the disablement is permanent or temporary; (ii) if the disablement is permanent, whether it is permanent total disablement or permanent partial disablement, (iii) if the disablement percentage is expressed with reference to any specific limb, then the effect of such disablement of the limb on the functioning of the entire body, that is the permanent disability suffered by the person. If the Tribunal concludes that there is no permanent disability then there is no question of proceeding further and determining the loss of future earning capacity. But if the Tribunal

concludes that there is permanent disability then it will proceed to ascertain its extent. After the Tribunal ascertains the actual extent of permanent disability of the claimant based on the medical evidence, it has to determine whether such permanent disability has affected or will affect his earning capacity.

10. 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 ability (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 so that he continues to earn or can continue to earn his livelihood. For example, if the left hand of a claimant is amputated, the permanent physical or functional disablement may be assessed around 60%. If the claimant was a driver or a carpenter, the actual loss of earning capacity may virtually be hundred percent, if he is neither able to drive or do carpentry. On the other hand, if the claimant was a clerk in government service, the loss of his left hand may not result in loss of employment and he may still be continued as a clerk as he could perform his clerical functions; and in that event the loss of earning capacity will not be 100% as in the case of a driver or carpenter, nor 60% which is the actual physical disability, but far less. In fact, there may not be any need to award any compensation under the head of `loss of future earnings', if the claimant continues in government service, though he may be awarded compensation under the head of loss of amenities as a consequence of losing his hand. Sometimes the injured claimant may be continued in service, but may not found suitable for discharging the duties attached to the post or job which he was earlier holding, on account of his disability, and may therefore be shifted to some other suitable but lesser post with lesser emoluments, in which case there should be a limited award under the head of loss of future earning capacity, taking note of the reduced earning capacity. It may be noted that when compensation is awarded by treating the loss of future earning capacity as 100% (or even

anything more than 50%), the need to award compensation separately under the head of loss of amenities or loss of expectation of life may disappear and as a result, only a token or nominal amount may have to be awarded under the head of loss of amenities or loss of expectation of life, as otherwise there may be a duplication in the award of compensation. Be that as it may.

11. The Tribunal should not be a silent spectator when medical evidence is tendered in regard to the injuries and their effect, in particular the extent of permanent disability. Sections 168 and 169 of the Act make it evident that the Tribunal does not function as a neutral umpire as in a civil suit, but as an 12 active explorer and seeker of truth who is required to `hold an enquiry into the claim' for determining the `just compensation'. The Tribunal should therefore take an active role to ascertain the true and correct position so that it can assess the `just compensation'. While dealing with personal injury cases, the Tribunal should preferably equip itself with a Medical Dictionary and a Handbook for evaluation of permanent physical impairment (for example the Manual for Evaluation of Permanent Physical Impairment for Orthopedic Surgeons, prepared by American Academy of Orthopedic Surgeons or its Indian equivalent or other authorized texts) for understanding the medical evidence and assessing the physical and functional disability. The Tribunal may also keep in view the first schedule to the Workmen's Compensation Act, 1923 which gives some indication about the extent of permanent disability in different types of injuries, in the case of workmen. If a Doctor giving evidence uses technical medical terms, the Tribunal should instruct him to state in addition, in simple non-medical terms, the nature and the effect of the injury. If a doctor gives evidence about the percentage of permanent disability, the Tribunal has to seek clarification as to whether such percentage of disability is the functional disability with reference to the whole body or whether it is only with reference to a limb. If the percentage of permanent disability is stated with reference to a limb, the Tribunal will have to seek the doctor's opinion as to whether it is possible to deduce the corresponding functional permanent disability with reference to the whole body and if so the percentage.

12. The Tribunal should also act with caution, if it proposed to accept the expert evidence of doctors who did not treat the injured but who give `ready to use' disability certificates, without proper medical assessment. There are several instances of unscrupulous doctors who without treating the injured, readily giving liberal disability certificates to help the claimants. But where the disability

certificates are given by duly constituted Medical Boards, they may be accepted subject to evidence regarding the genuineness of such certificates. The Tribunal may invariably make it a point to require the evidence of the Doctor who treated the injured or who assessed the permanent disability. Mere production of a disability certificate or Discharge Certificate will not be proof of the extent of disability stated therein unless the Doctor who treated the claimant or who medically examined and assessed the extent of disability of claimant, is tendered for cross-examination with reference to the certificate. If the Tribunal is not satisfied with the medical evidence produced by the claimant, it can constitute a Medical Board (from a panel maintained by it in consultation with reputed local Hospitals/Medical Colleges) and refer the claimant to such Medical Board for assessment of the disability.

13. We may now summarise the principles discussed above:

(i) All injuries (or permanent disabilities arising from injuries), do not result in loss of earning capacity.

(ii) The percentage of permanent disability with reference to the whole body of a person, cannot be assumed to be the percentage of loss of earning capacity. To put it differently, the percentage of loss of earning capacity is not the same as the percentage of permanent disability (except in a few cases, where the Tribunal on the basis of evidence, concludes that percentage of loss of earning capacity is the same as percentage of permanent disability).

(iii) The doctor who treated an injured-claimant or who examined him subsequently to assess the extent of his permanent disability can give evidence only in regard the extent of permanent disability. The loss of earning capacity is something that will have to be assessed by the Tribunal with reference to the evidence in entirety.

(iv) The same permanent disability may result in different percentages of loss of earning capacity in different persons, depending upon the nature of profession, occupation or job, age, education and other factors.

14. The assessment of loss of future earnings is explained below with reference to the following illustrations:

Illustration `A': The injured, a workman, was aged 30 years and earning Rs.3000/- per month at the time of accident. As per Doctor's evidence, the permanent disability of the limb as a consequence of the injury was 60% and the consequential permanent disability to the person was quantified at 30%. The loss of earning capacity is however assessed by the Tribunal as 15% on the basis of evidence, because the claimant is continued in employment, but in a lower grade. Calculation of compensation will be as follows:

a) Annual income before the accident : Rs.36,000/-.

b) Loss of future earning per annum (15% of the prior annual income) : Rs. 5400/-.

c) Multiplier applicable with reference to age : 17

d) Loss of future earnings : (5400 x 17) : Rs. 91,800/-

Illustration `B': The injured was a driver aged 30 years, earning Rs.3000/- per month. His hand is amputated and his permanent disability is assessed at 60%. He was terminated from his job as he could no longer drive. His chances of getting any other employment was bleak and even if he got any job, the salary was likely to be a pittance. The Tribunal therefore assessed his loss of future earning capacity as 75%. Calculation of compensation will be as follows:

a) Annual income prior to the accident : Rs.36,000/-.

b) Loss of future earning per annum (75% of the prior annual income) : Rs.27000/-.

c) Multiplier applicable with reference to age : 17

d) Loss of future earnings : (27000 x 17) : Rs. 4,59,000/-

Illustration `C': The injured was 25 years and a final year Engineering student. As a result of the accident, he was in coma for two months, his right hand was amputated and vision was affected. The permanent disablement was assessed as 70%. As the injured was incapacitated to pursue his chosen career and as he required the assistance of a servant throughout his life, the loss of future earning capacity was also assessed as 70%. The calculation of compensation will be as follows:

a) Minimum annual income he would have got if had been employed as an Engineer : Rs.60,000/-

b) Loss of future earning per annum (70% of the expected annual income) : Rs.42000/-

c) Multiplier applicable (25 years) : 18

d) Loss of future earnings : (42000 x 18) : Rs. 7,56,000/-

[Note : The figures adopted in illustrations (A) and (B) are hypothetical. The figures in Illustration (C) however are based on actuals taken from the decision in Arvind Kumar Mishra (supra)]."

19. Having regard to the extent of disablement, assessed by two doctors, the claims tribunal, has fixed the same as 62%, for which, a sum of Rs.1,86,000/- has been awarded at the rate of Rs.3,000/- per percentage of disability. Following the decisions in Smt. Sarla Verma & Ors. Vs. Delhi Transport Corporation and another, reported in 2009 (2) TN MAC 1 (SC), R.Raja Vs. L.S.Dilli Babu and another, reported in 2012 (1) TNMAC 620, Sri Laxman @ Laxman Mourya Vs. Divisional Manager, Oriental Insurance Co. Limited and another, reported in 2012 (1) TN MAC 28 (SC) and A.Elango Vs. R.Natarajan and another, reported in 2013 (1) TN MAC 812, the claims tribunal has applied multiplier

method for computing loss of future earning.

20. Medical expenses of Rs.7,81,230/- awarded to the respondent/claimant is duly supported by Exs.P3 & P7, series of medical bills and other documents pertaining to admission, treatment, in the hospital. Rs.50,000/- awarded as compensation towards future medical expenses can also be justified, having regard to the age of the respondent viz., 61 years, gravity of the injuries, in the head and other parts of the body.

21. Compensation of Rs.50,000/- awarded towards pain and sufferings is also reasonable. However, compensation awarded under the head loss of amenities is slightly less. While considering the nature of injuries period of treatment, extent of disability and the loss of future earning and other components, this Court is of the view that the quantum of compensation cannot be said to be exorbitant, warranting interference.

22. The tribunal has not considered awarding any compensation for the loss of earning during the period of treatment. For the reasons stated supra, award of the tribunal is confirmed. The Civil Miscellaneous Appeal is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

23. Consequent to the dismissal of the appeal, the appellants, are directed to deposit the entire award amount, with interest at the rate of 7.5% per annum from the date of claim till the date of realisation and costs, less the amount already deposited, if any, to the credit of MCOP No.233 of 2012 dated 30.06.2014 on the file the Motor Accidents Claims Tribunal (Principal District Judge), Perambalur, within a period of six weeks from the date of receipt of a copy of this order. It is open to the respondents/claimants to seek for disbursement of the award amount, by making necessary applications.

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

skm/ars

To

1. Motor Accidents Claims Tribunal,
   Principal District Judge, Perambalur.

2. The Section Officer,
   VR Section, High Court, Madras.

+1 cc to Mr.Royan Law Associates, Advocate, sr.40841
+1 cc to Special Government Pleader, Advocate, sr.42549

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C.M.A. No.1752 of 2015