

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 29.9.2016

CORAM:

THE HON'BLE MR. JUSTICE S. MANIKUMAR
AND
THE HON'BLE MR. JUSTICE N.AUTHINATHAN

C.M.A. No.2298 of 2016

and

C.M.P.No.16226 of 2016

M/s.Reliance General Insurance Co. Ltd.,
having its office at Shri Lakshmi Complex
1st Floor, Bharathi Street
Omalar Main Road
Swarnapuri, Salem ...Appellant/3rd Respondent
Vs.

1.C.Anandakrishnan ...1st Respondent/Claimant
2.K.Natarajan
3.S.Thangavelu ... Respondents 2 and 3/Respondents 1 & 2

Civil Miscellaneous Appeal filed under Section 173 of the
Motor Vehicles Act, 1988 against the judgment and decree, dated
4.2.2015 made in MCOP No.625 of 2012, on the file of Motor
Accidents Claims Tribunal (Special Subordinate Judge),
Coimbatore.

For Appellant : Mr.S.Arun Kumar

For Respondents: Mr.C.D.Johnson for R1

JUDGMENT

(delivered by S.MANIKUMAR, J.)

Challenge in this appeal, is to the quantum of compensation
of Rs.44,73,000/- with interest, at the rate of 7.5% per annum,
from the date of claim, till realisation, awarded to the
injured, on the grounds that the Tribunal erred in holding the
driver of Eicher lorry bearing Registration No.TN-30 AH-1314,
insured with M/s.Reliance General Insurance Company Ltd, Salem
was negligent in causing the accident. Extent of disability of
100% and correlating the same, for computing the loss of earning
is also questioned.

2. Short facts leading to the appeal are that on 6.12.2011 at 4.15 p.m, when the respondent was riding a motorcycle bearing Registration No.TN-43 C-0388, from North to South direction, keeping to the left side of the road, near an electric crematorium, Sathy Road, Coimbatore, an Eicher lorry bearing Registration No.TN-30 AH-1314, insured with Reliance General Insurance Co. Ltd./appellant herein, which came in the same direction, while overtaking a motorcycle, dashed against the right side of the motorcycle. The motorcyclist was thrown away and sustained grievous injuries. In this regard, a case in crime No.379/2011 under Sections 279 and 338 IPC was registered against the driver of the Eicher lorry bearing Registration No.TN-30 AH-1314 on the file of Traffic Inspector (West), Central Police Station, Coimbatore. The motorcyclist/first respondent, sustained fracture, vertebrae crushed injuries. At the time of accident, he was aged 27 years. Contending inter alia that he suffered 100% disability and thus lost his earning capacity, he filed MCOP No.625 of 2012 on the file of Motor Accident Claims Tribunal, (Special Subordinate Judge), Coimbatore, claiming compensation of Rs.40,00,000/-.

3. M/s.Reliance General Insurance Co. Ltd., the appellant herein, defended the claim and denied the manner of accident. Insurance Company has disputed that the lorry bearing Registration No.TN-30 AH-1314, was not at all involved in the accident and that the owner of the vehicle, had, colluded with the first respondent for the purpose of claiming compensation. Without prejudice to the above, company has also disputed the quantum of compensation under various heads.

4. Before the Tribunal, wife of the respondent/injured examined herself as PW1. Saravanakumar - PW2, is the eye witness. Dr.Kesavamoorthy - PW3, is the doctor, who clinically examined the first respondent, with reference to the medical records and issued Ex.P20-disability certificate. Reliance General Insurance Co. Ltd./appellant herein, has not adduced any oral or documentary evidence.

5. Evaluating the pleadings and the evidence, the Claims Tribunal held that the driver of the Eicher lorry bearing Registration No.TN-30 AH-1314, was negligent in causing the accident and having regard to the age of the first respondent/injured, nature of injuries, avocation, income and the extent of disability assessed and applied multiplier method, awarded compensation of Rs.44,73,000/- with interest, at the rate of 7.5% per annum, from the date of claim till realisation, as hereunder:

Loss of earning : Rs.18,36,000
Medical Bills : Rs.21,67,000
Attendent Charges : Rs. 3,00,000
Pain and suffering : Rs. 50,000
Loss of amenities, enjoyment
of life including prosperity: Rs.1,00,000

Nourishment : Rs. 10,000

Transportation : Rs. 10,000

Total : Rs. 44,73,000

6. Though Mr.S.Arun Kumar, learned counsel for the insurance company/appellant herein, contended that the Tribunal has erred in holding that the driver of the Eicher lorry bearing Registration No.TN-30 AH-1314 alone was negligent in causing the accident, but on the facts and circumstances of the case, the Tribunal, ought to have fixed contributory negligence on the motorcyclist also, this court is not inclined to accept the said contentions for the reason that, to speak about the manner of accident, PW1 - wife of the injured/first respondent, has adduced evidence. PW2, eye witness has supported her version. Ex.P1-FIR has been lodged against the driver of the Eicher lorry bearing Registration No.TN-30 AH-1314, insured with Reliance General Insurance Co. Ltd., Salem/appellant herein. Upon perusal of the same, the Tribunal has recorded that for the rash and negligent driving of Eicher lorry bearing Registration No.TN-30 AH-1314, the Traffic Investigation Wing (West), Central Police Station, has registered a criminal case against the driver of Eicher lorry in Crime No.379/2011. After investigation, Ex.P3-charge sheet has been filed. Ex.P4-rough sketch has also been marked. Added further, upon perusal of Ex.P5, a xerox copy of docket extract in STC No.347/2012 on the file of learned Judicial Magistrate No.8, Coimbatore, the Tribunal has noticed that the driver of Eicher lorry has pleaded guilty before the Criminal Court and thereafter, convicted and sentenced him to fine. Thus, it could be seen that the oral testimony of the claimants is duly corroborated by documentary evidence.

7. On the contra, there is absolutely no rebuttal evidence, either oral or documentary. Driver of the lorry has not been examined. Non-examination of the driver of the lorry, would lead

to adverse inference. Useful reference can be made to few decisions in this regard.

(i) In *New India Assurance Co. Ltd., v. Debajani Sahu* reported in I (2002) ACC 103 (Ori.), the Hon'ble Orissa High Court held that,

"8. In the present case, the Claims Tribunal found about the negligence of the bus driver on the basis of the evidence of the P.Ws. It is contended that P.W. 2 himself being the driver employed by the deceased was a highly interested witness and his evidence cannot be accepted as reliable. There is no dispute in the fact that the accident was caused involving the scooter and the bus. Even assuming that the evidence of P.W. 2 is not accepted, still then the doctrine of *res ipsa loquitur* is applicable. In such a situation, the owner of the bus should have examined the driver of the bus to explain the circumstances under which the accident occurred, as the other person involved in the accident having died cannot speak from the grave to explain the circumstances under which the accident had taken place. Of course, the bus owner has remained ex-parte, but no attempt was made by the Insurance Company which was contesting the case even on merit (whether justifiably or not is immaterial), has not chosen to adduce any evidence to rebut the evidence of P.W. 2, not has bothered to summon the bus driver to explain the circumstances under which the accident took place. In such a case, an adverse inference can be drawn against the owner/Insurance Company for not examining the bus driver who would have been the best witness to explain the circumstance under which the accident occurred. In such view of the matter, the finding of the Tribunal on the question of negligence cannot be assailed and the contention in this regard raised by the Counsel for the appellant cannot be accepted."

(ii) In *Sitabai v. Ishak Hussain* reported in I (2001) ACC 761 (DB), the Hon'ble Madhya Pradesh High Court, at Paragraph 5, held as follows:

"5. In this case, the claimants could not examine any eyewitness of the accident. It was difficult for the claimants to search an eyewitness as the claimants were not present on the spot at the time of accident. This difficulty is avoided by applying the maxim *res ipsa loquitur*. Their Lordships of the Supreme Court in case of *Puspabai Purshottam Udeshi v. Ranjit Ginning and Pressing Co.*, reported in 1977 ACJ 343 (SC), observed:

"The normal rule is that it is for the plaintiff to prove negligence but as in some cases considerable hardship is caused to the plaintiff as the true cause of the accident is not known to him but is solely within the knowledge of the defendant who caused it, the plaintiff can prove the accident but cannot prove how it happened to establish negligence on the part of the defendant. This hardship is sought to be avoided by applying the principle of *res ipsa loquitur*. The general purport of the words *res ipsa loquitur* is that the accident 'speaks for itself or tells its own story. There are cases in which the accident speaks for itself so that it is sufficient for the plaintiff to prove the accident and nothing more. It will then be for the defendant to establish that the accident happened due to some other cause than his own negligence. Where the maxim is applied the burden is on the defendant to show either that in fact he was not negligent or that the accident might more probably have happened in a manner which did not connote negligence on his part. For the application of the principle it must be shown that the car was under the management of the defendant and that the accident is such as in ordinary course of things does not happen if those who had the management used proper care."

In this case, the respondent No. 1 was driving the vehicle which left the road and dashed against a tree. In view of this maxim, the burden shifts on the respondent No. 1 to prove that he was not negligent. It was in the special knowledge of respondent No. 1 as to how the vehicle left the road and came down and struck against a tree. The respondent No. 1 did not examine himself. Under such circumstances, adverse inference that he drove the vehicle in a rash and negligent manner as a result of which this accident occurred, shall be drawn against him. The learned Tribunal committed error in not applying this maxim. We hold that the accident occurred due to rash and negligent driving of the vehicle by respondent No. 1."

(iii) In Beni Bai & others v. A. Salim & another reported in II (1999) ACC 408 (DB) (M.P.), the Hon'ble Madhya Pradesh High Court, held as follows:

'In the circumstances, for non-examination of the material witnesses particularly the driver and the conductor, who had the first hand knowledge of the manner in which the accident occurred, necessarily an adverse inference has to be drawn against the respondents. For want of evidence on behalf of the respondents, the plea raised in defence cannot be said to be established. On the other hand, the appellants have examined Atmaram, A.W.1. who was at the spot, who stated that at the bus stop when the passengers were getting down from the bus, the driver without seeing that the passengers have got down or not, started the bus and there one boy came under the wheel of the bus. From the circumstances, it cannot be inferred that the deceased might have jumped from the running bus. Hence it was the duty of the driver and conductor to have taken care to see whether passengers have got down from the bus or not, then only the driver could have started the bus. As the driver and conductor have failed in their duties to take care, we hold that the accident occurred due to negligence of the driver of the city bus. This Court in similar circumstances where the same type of defence was taken, has observed that it is the driver of the passenger bus who has to take care that the passengers who wish to get down from the bus have got down and then to start the bus. But that care was not taken. Therefore, it was held that the accident was caused because of the negligence of the driver and conductor.'

8. In light of the above discussion and decisions, and testing the finding of negligence fixed on the driver of the Eicher lorry bearing Registration No.TN-30 AH-1314, on the principles of preponderance of probability, we are of the view that the finding of the Tribunal cannot be termed as perverse, warranting interference. Contention of contributory negligence is rejected.

9. On the quantum of compensation, it is the evidence of PW1-wife, that her husband, motorcyclist, sustained grievous injuries. He was Proprietor of a private firm in the name and style M/s.Asmi Enterprises and earned Rs.25,000/- per month. To prove the educational qualifications of her husband/injured, she has marked Exs.P15 to Ex.P16, namely, copy of transfer certificate, provisional certificate issued by Bharathiar University and copy of certificate, Bachelor of Management,

issued by Bharathiar University. To prove that injured was running a private firm, she has marked Ex.P10-xerox copy of the acknowledgement of Registration of firm, issued by the Registration Department, Government of Tamil Nadu. To prove that the first respondent sustained grievous injuries, and loss of future earning capacity, she has marked Ex.P6-wound certificate, Exs.P7 and P8 - discharge summaries.

10. PW3-Dr.Kesavamoorthy, who clinically examined the first respondent/injured, has deposed that injured was having spastic weakness of both upper and lower limbs, cortical blindness (perception of movement only), spastic dysarthria and required support of others, for daily activities and that the injured has memory impairment. Thus, considering the nature of injuries, oral and documentary evidence, the Tribunal has determined that the first respondent has suffered 100% permanent disability. On the aspect of disability and correlation to the avocation claimed, and consequently, loss of earning capacity, this court, deems it fit to consider few decisions, to the facts and circumstances of the case, as to whether the Tribunal has committed any mistake.

11. In Rajkumar v. Ajay Kumar reported in 2011 ACJ 1 (SC), wherein, the Hon'ble Supreme Court explained with illustrations, as to how the extent of loss of earning capacity has to be fixed,

"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 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. - 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 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% : Rs.42000/- of the expected annual income)

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)]."

In the light of the above, we do not find any illegality in fixing 100% disablement.

12. According to PW1-wife, at the time of accident, the injured was aged 27 years. Ex.P14 is the transfer certificate, wherein the date of birth has been mentioned as 20.11.1984. Based on the above, the Tribunal has determined the age of the first respondent/injured as 27 years.

13. Though a sum of Rs.25,000/- has been claimed as monthly income, the Tribunal, has fixed the same only as Rs.9,000/-. As the injured has suffered 100% disability, the Tribunal, applied 17 multiplier applicable to the age of the injured, as per Sarla Verma vs. Delhi Transport Corporation and Another reported in 2009-5-L.W.-561 and computed the loss of future earning as Rs.18,36,000/-.

14. On the basis of Exs.P11 and P12 series - Medical bills, the Tribunal has awarded Rs.21,67,000/- under the head medical expenses. Fixing the life expectancy of the injured and requirement of an attendant for the rest of his life time, the Tribunal has awarded Rs.3,00,000/- under the head attendant charges. In addition to the above, the Tribunal has awarded Rs.50,000/- towards pain and suffering. The Tribunal has awarded Rs.1,00,000/- under the head loss of amenities and enjoyment of life. That apart, the Tribunal has awarded Rs.10,000/- for extra nourishment and Rs.10,000/- for transportation. There is no award for loss of income during the treatment period and conventional damages. Though the appellant herein has contended that the extent of disability determined by the Tribunal is on the higher side and consequently, the quantum of compensation should be reduced, in the light of our discussion, and the

decisions stated supra, this court is of the view that there is no irregularity and illegality in the impugned award, warranting interference or reduction in the quantum of compensation.

15. In the result, the appeal is dismissed. The judgment and decree of the Motor Accident Claims Tribunal (Special Subordinate Court), Coimbatore, dated 4.2.2015 made in M.C.O.P.No.625 of 2012, is confirmed. However, there shall be no order as to cost. Consequently, the connected civil miscellaneous petition is closed.

16. During the course of arguments, a representation has been made by both the learned counsel for the parties to this appeal that as on the date of hearing of this appeal, PW1-wife is not living with the first respondent/injured, as the injured is stated to be in vegetative state, due to the accidental injuries, and in such circumstances, we are of the view that it is the duty of the Tribunal to see that the compensation awarded to the victim, should be purposely spent, for the rest of his life time. The appellant-Insurance Company, is directed to deposit the entire award amount, with proportionate accrued interest and costs, less the statutory deposit, to the credit of MCOP No.625 of 2012, on the file of the Motor Accidents Claims Tribunal (Special Subordinate Court), Coimbatore, within a period of six weeks from the date of receipt of a copy of this judgment. The Tribunal shall deposit the amount in a Nationalised Bank fetching maximum interest proximate to the residence of the first respondent/injured. If any application is filed by the first respondent or on his behalf, such portion of the amount required to meet the medical expenditure or already incurred, be disbursed and that the Tribunal is also directed to pass appropriate orders, on the payment out application depending upon the need.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

asr

To

The Special Subordinate Judge,
Motor Accidents Claims Tribunal
Coimbatore.

C.M.A. No.2298 of 2016

gr[co]
srg 30/12/2016



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