

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.2289 of 2016
and
C.M.P.No.16184 of 2016**

M/s.Reliance General Insurance Company Limited
Sri Lakshmi Complex, 1st Floor,
Bharathi Street, Omalur Main Road
Swarnapuri, Salem - 636 004 ... Appellant

Vs.

1.Selvam
2.Periyasamy ... Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree, dated 24.7.2015 made in MCOP No.1921 of 2011, on the file of Motor Accidents Claims Tribunal (Special Subordinate Court No.2), Salem.

For Appellant : Mr.N.Vijayaraghavan

For Respondents : Mr.S.P.Yuaraj, for R1

JUDGMENT
(delivered by **S.MANIKUMAR, J.**)

Challenge in this appeal, is to the quantum of compensation of Rs.12,60,920/- with interest, at the rate of 7.5% per annum, from the date of claim, till realisation, awarded to the first respondent/injured, by Motor Accidents Claims Tribunal (Special Subordinate Court No.2), Salem, is on appeal, on the grounds, inter alia that the Tribunal erred in applying the principles of law applicable to Workmen Compensation Act, 1923, for the purpose of awarding compensation to the injured/first respondent. It is also contended that the Tribunal erred in taking 100% disability for computing loss of earning capacity, on account of amputation and other injuries, sustained by the first respondent. Compensation awarded under other heads is also questioned.

2. Accident has occurred on 11.6.2011 involving two vehicles, a lorry bearing Registration No.RJ 36 GA 1012 and another lorry bearing Registration No.TN 30 P 3688.

3. Selvam, driver of the lorry bearing Registration No.TN 30 P 3688 sustained lacerated injuries in head, stomach and hands. His right leg was crushed. With the broken condition, it was pulled out. When he was taken to Jaipur hospital, the doctors suggested

amputation. Thereafter, he was taken to Delhi Appollo hospital. Subsequently, he was brought to Ganga hospital and 2/3rd portion of his right leg has been amputated. A portion of intestine was removed by surgical process.

4. Contending inter alia that due to amputation and other grievous injuries, he could not drive any vehicle, lost his avocation, the injured has filed MCOP No.1921 of 2011 on the file of Motor Accident Claims Tribunal (Special Subordinate Court No.2), Salem, claiming compensation, under various heads. M/s.Reliance General Insurance Co. Ltd./appellant herein, opposed the manner of accident, and denied liability. Without prejudice to the above, the appellant also disputed the age, avocation, nature of injuries and the quantum of compensation claimed under various heads.

5. 1st Respondent/injured examined himself as PW1 and adduced evidence. PW2 is the doctor, who clinically examined the 1st respondent, with reference to the medical records and issued Ex.P19-Disability certificate. Ex.P1 - First Information Report, Ex.P2 - Receipt, Ex.P3 - Prescription, Ex.P4 - tickets to prove travel by air, Ex.P5 - wound certificate, Ex.P6 - medical bill series, Ex.P7 - medical bill series, Ex.P8 - prescription, Ex.P9 - discharge summary, Ex.P10 - price list, Ex.P11 - investigation reports,

Ex.P12 - Scan films, Ex.P13 - Scan report, Ex.P14 - cover note, Ex.P15 - driving licence of the 1st respondent/injured, Ex.P16 - Identity Card issued by the Differently Abled and Rehabilitation Department, Ex.P17 - Trip sheets, Ex.P18 - photographs of the injured, Ex.P19 - Disability certificate issued by PW2-doctor. Ex.P20 - X-Ray and Ex.P21-Receipt, have been marked. A witness has been examined on behalf of the appellant herein/insurance company.

6. Evaluating the pleadings and evidence, the Tribunal, determined the extent of disability as 100%, applied the principles of law applicable to the Workmen Compensation Act, 1923, for awarding compensation of Rs.12,60,920/- to the injured/1st respondent, with interest, at the rate of 7.5% per annum from the date of claim, till realisation, as hereunder:

Loss of earning	: Rs. 9,57,120/-
Medical Expenses	: Rs. 3,03,800/-

Total	: Rs.12,60,920/-

7. On the first ground of challenge, perusal of the award shows that as per India Motor Tariff 28, an additional premium has been paid for the driver. As per IMT 28, injured can seek for compensation. The Tribunal, relying on the judgment in **Venkatesan v. M.K.V. Kandasamy Nadar and others** reported

in **2011 ACJ 366**, held that injured is entitled to compensation under the Workmen Compensation Act, 1923.

8. For making a claim, under the Motor Vehicles Act, 1988 three things have to be satisfied, viz. (1) there must be an accident, (2) use of the vehicle, and (3) the claimant must have suffered injuries or death, arising out of the accident. If the deceased was an employee of the second respondent, then Section 167 of the Motor Vehicles Act gives option to the claimants to claim compensation either under the Workmen's Compensation Act, 1923 or under the Motor Vehicles Act, 1988, but not under both. Reference can be made to a decision of the Hon'ble Division bench of this court in ***Oriental Insurance Company Ltd. v. Kalaiya Pillai*** reported in **2003 ACJ 1021**.

9. In ***Branch Manager, National Insurance Co. Ltd. v. C.Sivakumar*** reported in **2009 (2) TNMAC 325**, this Court, at paragraph 24, held as follows:

"the object of the two Acts, viz., the Motor Vehicles Act, 1988 and the Workmen's Compensation Act, 1923 is in no way different. However, the prime object of both the Acts is to provide relief of compensation to the victims of accidents. The only difference between the two Acts is that in regard to the Workmen's Compensation Act is concerned, it is confined to workmen as defined under the Act, while the relief mentioned under Chapters X to XII of the Motor Vehicles Act is available to all the victims of accidents involving a motor vehicle. In fact, both the

Acts are beneficial and social welfare ones, operating in the same field, in the considered opinion of this court. Therefore, the choice of forum to be adopted by a claimant is left to his wisdom. Resultantly, the only fetter will be that if a claimant has claimed and obtained a compensation under the Workmen's Compensation Act, then he cannot file a claim under the Motor Vehicles Act. Likewise, if a claimant has resorted to the remedy under the Motor Vehicles Act, then it is no longer open to him to work out his remedy under the Workmen's Compensation Act, 1923.

In the light of the above discussion and decisions, the first ground of challenge is not tenable.

10. On the second ground, as to whether the Tribunal was right in taking 100% as loss of earning capacity, on account of amputation and other injuries sustained by the first respondent, material record discloses that 2/3rd of his right leg has been amputated. After perusing Ex.P9-Discharge summary, the Tribunal has recorded that between 12.6.2011 and 30.6.2011, the injured was hospitalized and the summary of the treatment, as recorded is extracted:

Diagnosis : 2 Days old, gangrenous mid ilieum and with open grade III C fracture proximal third right tibia, Right heel pad avulsion with distal avascularity. Procedure: 12.6.2011 : Emergency laparotomy : resection of gangrenous mid ilium right above knee amputation, 25.6.2011 : Suturing of laceration right forearm.

11. PW2-Doctor, who clinically examined the respondent, has issued Ex.P19 - Disability certificate, assessing the extent of permanent disability as 85.83%. Injured has produced Ex.P15-driving licence. At the time of accident he was on his wheels. Therefore, there cannot be any dispute, regarding avocation. On the aspect of correlating the functional disability with loss of future earning, the Tribunal has considered few decisions, which are extracted here under:

12. In ***Ramachandrappa v. Manager, Royal Sundaram Alliance Insurance Co. Ltd.*** reported in ***2011 ACJ 2436 (SC)***, in paragraph 9, the Hon'ble Apex Court held as follows:

"The term 'disability', as so used, ordinarily means loss or impairment of earning power and has been held not to mean loss of a member of the body. If the physical efficiency because of the injury has substantially impaired or if he is unable to perform the same work with the same ease as before he was injured or is unable to do heavy work which he was able to do previous to his injury, he will be entitled to suitable compensation.

13. In ***Mohan Soni v. Ram Avtar Tomar and others*** reported in ***2012 ACJ 583 (SC)***, the Hon'ble Apex Court held as follows:

"8. The question of loss of earning capacity resulting from amputation of one of the legs in the case of a tanker driver was considered by this court in *K.Janardhan v. United India Insurance Co., Ltd.*, 2008 ACJ 2039 (SC). In that case, a tanker driver suffered serious injuries in a motor accident and as a result, his right leg was amputated up to the knee joint. He made a claim under the Workmens' Compensation Act, 1923. The Commissioner for Workmen's Compensation held that disability suffered by him as a result of the loss of the leg was 100 per cent and awarded compensation to him on that basis. In appeal, the High Court, like in the present case, referred to the schedule to the Workmen's Compensation Act, 1923 and held that the loss of a leg on amputation amounted to reduction in the earning capacity by 6 per cent and accordingly, reduced the compensation awarded to the tank driver. This court set aside the High Court judgment and held that the tanker driver had suffered 100 per cent disability and incapacity in earning his keep as a tanker driver as his right leg was amputated from knee and, accordingly, restored the order passed by Commissioner for Workmen's Compensation. In *K.Janardhan (supra)* this court also referred to and relied upon an earlier decision of the court in *Pratap Narain Singh Deo v. Shrinivas Sabata*, 1976 ACJ 141(SC), in which a carpenter who suffered an amputation of his left arm from the elbow was held to have suffered complete loss of his earning capacity.

10. In the light of aforesaid decision, we find it extremely difficult to uphold the decision of the High

Court and the Tribunal based on the finding that the loss of the appellant's earning capacity as a result of the amputation of his left leg was only 50 per cent. It is noted above that the appellant used to earn his livelihood as a cart puller. The Tribunal has found that at the time of the accident his age was 55 years, at that age it would be impossible for the appellant to find any job. From the trend of cross-examination it appears that an attempt was made to suggest that notwithstanding the loss of one leg the appellant could still do some work sitting down such as selling vegetables. It is all very well to theoretically talk about a cart puller changing his work and becoming a vegetable vendor. But the computation of compensation payable to a victim of motor accident who had suffered some serious permanent disability resulting from the loss of a limb, etc. should not take into account such indeterminate factors. Any scaling down of the compensation should require something more tangible than a hypothetical conjecture that notwithstanding the disability, the victim could make up for the loss of income by changing his avocation by adopting another means of livelihood.

14. In ***Rekha Jain v. National Insurance Co. Ltd.*** reported in **2013 SCJ 2161 (SC)**, the Hon'ble Supreme Court held as follows:

38... For a film actress, the physical appearance particularly the facial features are very important to act in films and in TV serials. It is in her evidence that

on account of the accident her face was disfigured, she has put on weight and has become fat and, therefore, she is unable to perform the role as an actress in films in future. Having regard to the nature of avocation she has been carrying on and wishes to carry on with in future, the opportunity is lost on account of the disfigurement of her face, to act in the films as an actress either as a heroine or actress in supporting role or any other role to be played in TV serials, albums and also as a model. It is in the evidence of the appellant that as per the District Medical Board of Sambalpur, her permanent disability is 30 percent. Having regard to the nature of injuries and observations made by this court and Karnataka High Court in the cases referred to supra. We have to record a finding of fact that the appellant's permanent disability should be treated as 100 per cent functional disablement as she cannot act in the films and in TV serials in future at all. Therefore, on account of the aforesaid reasons, she has suffered functional disability. In this regard, it is relevant to refer to the judgment of this court in the case of National Insurance Co. Ltd. v. Mubasir Ahmed, 2007 ACJ 845 (SC). This court has held that loss of earning capacity is not a substitute for percentage of physical disablement. It is simply one of the factors taken into account to award just and reasonable compensation. Even though the claimant does not suffer from 100 per cent permanent physical disability, he suffers from 100 per cent functional disability if he loses the capacity to pursue his work as a result of the

accident.

42. In view of the aforesaid decisions of this court and various courts and High Courts of Karnataka and others referred to *supra*, we have to record the finding of fact having regard to the nature of grievous injuries and her disfigured face and that she was acting as an actress in films, TV serials, etc. Her functional disablement is 100 per cent.

15. In ***Jakir Hussein v. Sabir and others*** reported in **2015 (1) TN MAC 321 (SC)** the Hon'ble Apex Court held as follows:

15. In view of the doctor's evidence in this case, the Tribunal and the High Court have erroneously taken the extent of permanent disability at 30% and 55% respectively for the calculation of amount towards the loss of future earning capacity. No doubt, the doctor has assessed the permanent disability of the appellant at 55%. However, it is important to consider the relevant fact namely that the appellant is a driver and driving the motor vehicle is the only means of livelihood for himself as well as the members of his family. Further, it is very crucial to note that the High Court has clearly observed that his right hand was completely crushed and deformed. In the case of *Rajkumar v. Ajay Kumar (supra)*, this court specifically gave the illustration of a driver who has permanent disablement of hand and stated that the loss of future earning capacity would be virtually 100%. Therefore, clearly when it comes to loss of earning due to permanent disability, the same may

be treated as 100% loss caused to the Appellant since he will never be able to work as a driver again. The contention of the respondent insurance company that the appellant could take up any other alternative employment is no justification to avoid their vicarious liability. Hence, the loss of earning is determined by us at Rs.54,000/- per annum. Thus, by applying the appropriate multiplier as per the principles laid down by this court in the case of Sarla Verma and Ors. v. Delhi Transport Corporation and Ars., 2009 (2) TN MAC 1 (SC) : 2009 (6) SCC 121, the total loss of future earning of the appellant will be at Rs.54,000 x 16 = Rs.8,64,000/-

16. At this juncture, this Court also deems it fit to extract paragraphs 4 to 14 from **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 disability (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 : (5400×17) : 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 : (27000×17) : 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)*]."

17. Indisputably, the injured, a driver, who has lost his right leg, cannot continue his avocation. Extent of functional disablement is 85.83%. But, he is 100% disabled, insofar as loss of earning capacity. In the light of the discussion and decisions stated supra, we are of the view that the Tribunal has not committed any error in taking 100% disability for computing the loss of earning capacity. Fixing the income as Rs.8,000/-, the Tribunal has applied the principles of law applicable to Workmen Compensation Act, 1923, for computing the compensation $(Rs.8,000 \times 60/100 \times 199.40) = Rs.9,57,120/-$. On the basis of Exs.P6 and P7 - Medical bill series the Tribunal has awarded Rs.3,03,795/- under the head medical expenses.

18. In **Cholan Roadways Corporation Ltd., v. Ahmed Thambi and others** reported in **2006(4) CTC 433**, the Hon'ble Full Bench of this Court held loss of amenities as hereunder:-

"Loss of amenities : The next head of non-pecuniary loss is 'loss of amenities'. Besides damages for the pain and suffering sustained by a plaintiff by reason of his injuries, damages may be awarded for the losses sustained by him. Loss of amenities covers deprivation of the ordinary experiences and enjoyment of life and includes loss of the ability to walk or see, loss of a limb or its use, loss of congenial employment, loss of pride and pleasure in one's work, loss of marriage prospects and loss of sexual function. In India loss of marriage prospects and loss of enjoyment of life are awarded separately. Damages under this head are awarded whether the plaintiff is aware of the loss or not. They are awarded for the fact of the deprivation, rather than for the awareness of it."

19. Though the injured/respondent is entitled to a just and reasonable compensation under the above said heads, as held in Cholan Roadways's case. In addition to the above, the injured is also entitled to disability, compensation as per the decision of the Hon'ble Apex Court in **Kothandapani vs. Tamilnadu Transport Corporation**, reported in **2011 (5) SCC 420**. The Tribunal has failed to award just compensation under various heads. Quantum of compensation awarded cannot be said to be on the higher side and on the contra, we are of the view it is less.

20. In the light of the above discussions and decisions, we are of the view that there are no merits in the appeal, warranting intervention.

In the result, the appeal is dismissed. The judgment and decree of the Motor Accident Claims Tribunal (Special Subordinate Court No.2), Salem, dated 24.7.2015 made in M.C.O.P.No.1921 of 2011, is confirmed. 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.1921 of 2011, on the file of the Motor Accidents Claims Tribunal (Special Subordinate Court No.2), Salem, within a period of six weeks from the date of receipt of a copy of this judgment. The Tribunal is further directed to disburse the compensation amount, only after due verification and identity of the first respondent/injured. However, there shall be no order as to cost. Consequently, the connected civil miscellaneous petition is closed.

(S.M.K., J.) (N.A.N., J.)
29.9.2016

Index : Yes/No
Internet : Yes/No
asr

To
The Motor Accidents Claims Tribunal
(Special Subordinate Court No.2), Salem.

S. MANIKUMAR, J.
AND
N. AUTHINATHAN, J.

asr

C.M.A. No.2289 of 2015

29.09.2016