

THE HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

M.A.C.M.A.No.64 of 2009

JUDGMENT:

Aggrieved by the Award dated 18.04.2008 in M.V.O.P.No.283 of 2006 passed by the Chairman, M.A.C.T.-cum-III Additional District Judge, Kakinada (for short “the Tribunal”), the claimant preferred the instant appeal.

2) The factual matrix of the case is thus:

a) The case of the claimant is that on 17.12.2005 at about 10:00 AM when she was going to the medical shop for purchasing medicines, one lorry bearing No.AHY 6061 being driven by its driver at high speed in a rash and negligent manner dashed her. In the resultant accident, her right hand was totally crushed. Immediately she was admitted in Area Hospital, Ramachandrapuram and thereafter shifted to Government General Hospital, Kakinada where she took treatment for two months and her right hand was amputated upto shoulder. It is averred that the accident was occurred due to the fault of lorry driver. On these pleas, the claimant filed M.V.O.P.No.283 of 2006 under Section 166 of Motor Vehicles Act (for short “MV Act”) and claimed Rs.2,50,000/- as compensation against respondents 1 to 3 who are driver, owner and insurer of the offending lorry.

b) Respondents 1 and 2 remained ex-parte.

- c) R3—Insurance Company filed counter and opposed the claim denying all the material averments made in the petition and urged to put the claimant in strict proof. R3 contended that driver of the lorry was not having valid and effective driving licence at the time of accident. R3 further contended that compensation claimed by the claimant is excessive and exorbitant and thus prayed to dismiss the O.P.
- d) During trial, PWs.1 and 2 were examined and Exs.A1 to A4 were marked and Ex.X1 was exhibited on behalf of claimant. Ex.B1—policy copy was marked on behalf of respondents.
- e) The Tribunal after considering the evidence on record held that the driver of the lorry was responsible for the accident and awarded compensation of Rs.1,13,000/- with proportionate costs and interest @ 7.5% p.a. against respondents 1 to 3 under different heads as follows:

For fracture and amputation of right arm	Rs. 50,000.00
For fracture of superior pubic rami	Rs. 25,000.00
Simple injuries	Rs. 3,000.00
Hospital & attendant charges	Rs. 25,000.00
Extra-nourishment charges	Rs. 10,000.00

Total	Rs. 1,13,000.00

Hence, the appeal by claimant.

- 3) The parties in this appeal are referred as they stood before

the Tribunal.

4) Heard arguments of Sri N.Siva Reddy, learned counsel for appellant/claimant and Smt.A.Jayanthi, learned counsel for R3/Insurance Company. R1/driver is not necessary party vide cause title. Notice sent to R2/owner served, but there is no representation.

5) Fulminating the award, learned counsel for appellant/claimant argued that the claimant sustained 50% permanent disability due to amputation of her right upper limb above elbow in the resultant accident and thus she suffered not only permanent disability but also loss of future earning capacity. Despite, the Tribunal awarded compensation only for injuries and physical disability but unfortunately did not grant any compensation for loss of future earning power due to the functional disability. He thus prayed to award just and reasonable compensation for loss of earning power.

6) Per contra, while supporting the award, learned counsel for R3/Insurance Company argued that the Tribunal awarded just and reasonable amount for physical disability which also includes compensation for loss of future earning power and therefore there is no need to award any more amount. She thus prayed to dismiss the appeal.

7) In the light of above rival arguments, the point for determination is:

“Whether the Tribunal committed error in not awarding

compensation for loss of earning power due to functional disability suffered by the claimant on account of amputation of her right upper limb?”

8) **POINT**: Accident, involvement of lorry bearing No. AHY 6061, injuries to claimant and amputation of her right upper limb are amply established by evidence on record and also not in dispute. The point is whether the Tribunal awarded just and adequate compensation to recoup the loss suffered by the claimant on account of amputation of her right hand.

a) A perusal of the award shows that as rightly pointed by learned counsel for appellant, the Tribunal granted compensation only for fracture injuries and physical disability suffered by the claimant due to amputation but it failed to award compensation for loss of earning power due to the functional disability sustained by the claimant on account of amputation of her right hand. Therefore, apart from compensation for physical disability she is also entitled to compensation for functional disability. The Apex Court in ***Raj Kumar vs. Ajay Kumar***^[1] delineated the method and manner in which compensation has to be assessed for functional disability. It observed thus:

“Para--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.”

b) In the light of above expression of the Apex Court, it is now to be seen what is the resultant functional disability of the claimant. She was a 45 years old lady by the time of accident and as per Ex.A1—FIR she was an agricultural coolie. Going by the nature of her occupation, 50% of physical disability as certified by doctor in Ex.A4—disability certificate, in my view, can be accepted as equivalent percentage of functional disability because though she lost her right upper limb, still she can attend some lighter works with her left upper limb and therefore, she is not totally incapacitated.

c) Coming to compensation, having regard to nature of her occupation her daily earnings in 2005 i.e. year of accident can be fixed at Rs.60/-. Thus her gross annual income comes to Rs.21,600/- (Rs.60/- x 30 x 12). In Exs.A1 to A3 her age is consistently mentioned as 45 years. As per the decision of Apex

Court in **Smt. Sarla Varma vs. Delhi Transport Corporation**^[2], “14” is the appropriate multiplier for the persons in the age group of 41 to 45 years. Thus, compensation for loss of earning power due to disability comes to Rs.1,51,200/- (Rs.21,600/- x 14 x 50%). Thus, the total compensation payable to the claimant is detailed as below:

For fracture and amputation of right arm	Rs.	50,000.00
For fracture of superior pubic rami	Rs.	25,000.00
Simple injuries	Rs.	3,000.00
Hospital & attendant charges	Rs.	25,000.00
Extra-nourishment charges	Rs.	10,000.00
For functional disability	Rs.	1,51,200.00

Total	Rs.	2,64,200.00

- 9) In the result, the appeal is allowed and ordered as follows:
- a) Compensation is enhanced from Rs.1,13,000/- to Rs.2,64,200/- with proportionate costs and interest @ 7.5.p.a. from the date of OP till the date of realisation.
 - b) Respondents in the OP are jointly and severally liable to pay compensation and they are directed to deposit the compensation amount within two (2) months from the date of this judgment, failing which execution can be taken out against them.

c) The appellant/claimant is directed to pay the additional Court Fee on Rs.14,200/-(Rs.2,64,200/- minus Rs.2,50,000/-) within one (1) month from the date of this judgment.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

U. DURGA PRASAD RAO, J

Date: 08.07.2016

Murthy

[\[1\]](#) 2011 ACJ 1 (SC)

[\[2\]](#) 2009 ACJ 1298 (SC)