

HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

M.A.C.M.A. No.3905 of 2011

JUDGMENT:

On perusal of the Award, at the outset, it must be said that this Court has not found any exorbitance in awarding compensation by the lower Tribunal as alleged by the Appellant/Insurance Company. On facts, the claimant, who, while travelling in an auto, suffered crush injury to his left leg when the driver of the auto drove vehicle in a rash and negligent manner and dashed against an Ice Cream Cart, whereby, the left leg of the claimant was ultimately amputated above knee. In the resultant claim petition in OP No.843 of 2004 filed by the claimant seeking compensation of Rs.6,00,000/-, the lower Tribunal awarded said amount under the following heads:

Pain and suffering	Rs. 50,000-00
Medical expenditure	Rs. 1,08,000-00
Loss of future amenities	Rs. 50,000-00
Loss of earnings	Rs. 4,32,000-00

Total:	Rs.6,40,000-00

(Rounded off to Rs.6,00,000/-)

It is to be noted that though the Tribunal arrived at a figure of Rs.6,40,000/-, it restricted the compensation to Rs.6,00,000/- as claimed by him and this amount is, now being challenged by the appellant/ Insurance Company in the instant appeal as being excessive and exorbitant.

2) The parties in the appeal are referred as they were arrayed before the lower Tribunal.

3) Heard arguments of Sri C.Prakash Reddy, learned counsel for appellant and Sri V.Rama Chandra Rao, learned counsel for R.1. Notice sent to R.2 was not yet returned.

4) Vehemently criticizing the Award as excessive, learned counsel for appellant would argue that as per the evidence of PW.2—the treatment Doctor, the disability of the claimant was only 60% but whereas in the opinion of PW.4, who is the Member of the Medical Board, the disability was curiously 85% but the lower Tribunal without adopting either of these two percentages, fixed the disability at 100% and accordingly, determined the compensation which by all means is highly excessive and illogical. Learned counsel would argue that if the disability of the claimant resulted out of amputation of his left leg above knee is assessed in terms of Workmen's Compensation Act (for short "W.C.Act"), it would not be more than 60% but the lower Tribunal as stated supra, has fixed a high disability at 100% without any reason and thereby compensation was drastically and unduly increased. Learned counsel would further argue that with the technological advancement, the claimant would have the benefit of a prosthesis with which he can attend most of his day-to-day activities including his driving job and in fact PW.2 has stated that he would refer the claimant to Physiotherapist, who is the correct person to fix the artificial leg and in which case, the disability of the claimant could be reduced to a great extent and keeping that in view, the Tribunal ought

to have fixed his disability at 60% as laid down in W.C.Act or ought to have fixed even lesser percentage considering the possibility of claimant getting the prosthesis. He further argued that the compensation for medical expenses and loss of future amenities granted by the Tribunal is also on high side. He thus prayed to reassess the compensation.

5) Per contra, while supporting the Award learned counsel for 1st respondent/claimant argued that the percentage of disability opined by PWs.2 and 4 was in fact a physical disability but however, the lower Tribunal considering the fact that the deceased was a driver-cum-tailor and with the amputation of his left leg above knee, he became unfit for his avocation, has rightly fixed his functional disability at 100% and accordingly, computed compensation and therefore, there was no fault on the part of the lower Tribunal. He further argued that compensation awarded under other heads is also reasonable one and in fact though the Tribunal arrived at a total compensation of Rs.6,40,000/-, it restricted compensation to Rs.6,00,000/- as claimed in the petition, inspite of the legal pronouncements are to the effect that Court can award more compensation than claimed in fit cases and therefore, the claimant has already suffered reduction of compensation which need not be further reduced. He thus prayed to dismiss the appeal.

6) Admittedly, the claimant's left leg was amputated above knee rendering him disabled. So far as percentage of disability is concerned, no doubt PWs.2 and 4 have given different percentages of the disability. As rightly observed by the lower Tribunal, the disability spoken by them is a

physical disability with reference to his whole body. In a decision reported in *Raj Kumar vs. Ajay Kumar and another*¹, the Apex Court has delineated the difference between physical disability and functional disability and stated that the percentage of physical disability may not necessarily always result in same percentage of functional disability and functional disability has to be assessed with reference to the avocation of the victim and the extent which the physical disability adversely effected on his avocation etc, facts. Therefore, though PWs.2 and 4 gave different percentages of disability, that was only a physical disability. Basing on adverse impact the said physical disability had on his avocation, the Tribunal has to assess his functional disability and that was what exactly the lower Tribunal did in the instant case. Considering his occupation as auto driver-cum-tailor, it held that due to his amputation of left leg, he would not be fit for attending either tailoring job or auto driver job. Therefore, in view of the ratio laid down in *Raj Kumar*'s case(1 supra), I consider that the Tribunal rightly fixed the functional disability of the claimant as 100% as it is evident that even with a prosthesis it would be difficult for him to attend the tailor work or auto driving work. Then the Tribunal took a modest amount of Rs.2,000/- p.m as the earnings of the claimant and accordingly, computed his loss of future earnings due to disability. It arrived at a figure of Rs.4,32,000/- and said amount by no means can be said to be on high side.

¹ 2011 ACJ 1 (SC)

a) Coming to the compensation under other heads, the Tribunal awarded a sum of Rs.50,000/- for pain and suffering. The claimant suffered crush injury in his left leg which resulted in amputation. Needless to say, he must have suffered excruciating pain and mental agony due to the crush injury and consequent amputation. In that view, an amount of Rs.50,000/- can by no means be said to be on high side.

b) The Tribunal then awarded Rs.50,000/- towards loss of future amenities and this amount also cannot be said to be an exorbitant one for the reason that with the amputation of left leg, the claimant cannot attend some of his basic works by himself and he has to depend on others. It is not out of way to remind here that he must have also lost his happy conjugal life due to amputation of his left leg. So a sum of Rs.50,000/- for loss of amenities is a reasonable amount.

c) The Tribunal then awarded Rs.1,08,000/- towards medical expenditure and the said amount is based on the cogent oral and documentary evidence. Thus, compensation under none of the heads can be harped as on high side. In fact, as rightly argued by learned counsel for 1st respondent/claimant, the Tribunal though arrived at a total figure of Rs.6,40,000/-, however, but restricted the amount to Rs.6,00,000/- as claimed in the O.P though granting more amount than claimed is perfectly valid in the eye of law in view of the judgment of the Apex Court reported in *Nagappa vs. Gurudayal Singh and others*². Since this appeal is not

² 2003 ACJ 12 = AIR 2003 SC 674

instituted by the claimants, said amount cannot be enhanced now but at any rate, the compensation awarded need not be reduced as it is a just and reasonable one.

7) In the result, I find no merits in the appeal and accordingly, the same is dismissed with costs.

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

Date: 09.09.2016
scs

U. DURGA PRASAD RAO, J

