

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 20.03.2017

C O R A M

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
AND
THE HONOURABLE MR.JUSTICE B.GOKULDAS

Civil Miscellaneous Appeal No.1023 of 2017

National Insurance Co.Ltd.,
Kangeyam. Appellant/2nd Respondent

Vs

1. Mayilsamy 1st Respondent/Petitioner

2. Nagaraj 2nd Respondent/1st Respondent

Prayer: Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 3/9/2014 made in MCOP No.1011 of 2012 on the file of the Motor accident Claims Tribunal, (Principal Subordinate Judge), Tiruppur.

For Appellant : Ms.R.Sreevidhya

For Respondents : Mrs.V.Suguna
for Mr.C.Munusamy for R.1

J U D G M E N T

(Judgment of the Court was made by S.Manikumar,)

In the accident, which occurred, on 14/11/2009, first respondent, stated to be a partner, in a business firm, in the name and style of "Jeyashri Creation" sustained grievous injuries in the head, left hand and other parts of the body. A case in Crime No.1755 of 2009, under Sections 279 and 337 of the Indian Penal Code, was registered against the driver of a van, bearing Registration No.TN69Z-5355, insured with the appellant herein.

2. First respondent was provided with First-Aid, in Thirupur Kumaran Hospital and thereafter, admitted in K.M.C, Hospital, Kovai. As the injured sustained grievous injuries in the skull, resulting in concussion, fracture of left parital bone, surgeries were performed to remove concussion and for re-union of the fractured bone. He was hospitalised between 15/11/2009 and 7/12/2009; from 8/12/2009 to 19/6/2010 and again, between 20/6/2010 and 28/6/2010. Before the Tribunal, the injured has produced Ex.P.8 X-ray, Ex.P.9 scan

and Exs.P.10 and 11 discharge summaries and Ex.P.12 lab report.

3. P.W.2 Doctor, who clinically examined the injured has deposed about the details of the injuries stated supra, and surgeries underwent. He has further added that there was no bone in the skull measuring 8 cms x 6 cms. Going through the medical records stated supra, including Ex.P.9 scan report, he has assessed the extent of disablement and issued Ex.P.18 disability certificate, certifying that the first respondent/injured, suffered 32% partial permanent disablement. Added further, P.W.3 Doctor, examined on behalf of the first respondent/injured, has also deposed that in the brain, there was concussion, and right parital bone was broken.

4. It is the case of the first respondent/injured that prior to the accident, he was engaged in business, under the name and style of "Jeyashri Creation" and earned Rs.50,000/- p.m. To establish avocation, Ex.P.15 Registration Certificate has been marked. To substantiate the averments that he had studied M.B.A, Ex.P.13 College Identity card has been marked. Ex.P.14 partnership deed has been marked. Added further, the injured has also marked Ex.P.16 Identity card, to prove that he was an Income Tax assessee. Ex.P.17 is the Income Tax return, for the year 2010 - 2011. Analysing the oral and documentary evidence, on the aspects of avocation and income and taking note of the entry made in Ex.P.17 Income Tax returns, stated supra, the Tribunal has determined the annual income as Rs.1,61,392/-.

5. Having regard to the functional disablement of 32% determined by P.W.2 Doctor, supported by Ex.P.18 disability certificate, correlating the same with the avocation and loss of future earning capacity, in running the business "Jeyashri Creation", Banian Company, Tirupur, the Tribunal decided to apply multiplier method, for the purpose of computing loss of future earning. At the time of accident, he was 25 years. Based on the entries in Ex.P.13 College Identity Card, the Tribunal determined the age of the injured as 25 years and applied 18 multiplier. Loss of future earning capacity has been estimated as Rs.9,29,617.92 ($1,61,392 \times 18 \times 32/100$). Added further, towards loss of pain and suffering, mental agony, the Tribunal has awarded Rs.1 lakh. On the basis of Ex.P.7 medical records, the Tribunal has awarded Rs.3,37,100/-, under the head medical expenses. For loss of earning, during the treatment period, the Tribunal has awarded Rs.1,61,392/-; for transportation - Rs.15,000/-; for nutrition, Rs.20,000/-, for damages and articles - Rs.1,000/-, Rs.50,000/- for future medical expenses and Rs.1,00,000/- for pain and suffering has been awarded. Altogether, the Tribunal has awarded Rs.16,14,109/- as compensation, with interest, at the rate of 7.5% p.a., from the date of claim till realisation and costs.

6. Challenging the quantum of compensation awarded by the Tribunal, National Insurance Company is on appeal.

7. Ms.R.Sree Vidhya, learned counsel appearing for the Insurance Company/appellant herein submitted that the Tribunal has failed to consider Ex.P.17 Income tax return, for the period 2010 - 2011, in proper perspective and that the injured has not marked three years returns, enabling the Tribunal, to arrive at a proper conclusion, regarding the income earned by the respondent/injured, at the time of accident. Contention has also been made that when the respondent was stated to have been engaged, in the business M/s.Jeyashri Creation, he does not lose any income from the said Company, even assuming that there was any disablement. Except the above, no other ground has been made.

8. Heard the caveator, who submitted that only after proper assessment of oral and documentary evidence, the Tribunal has determined the annual income of the respondent/injured, and accordingly, computed compensation for loss of earning, during the period of treatment and future. It is also her contention that the well considered decision of the Tribunal, does not require any interference.

9. Heard the learned counsel for the parties and perused the materials available on record.

10. In the foregoing paragraphs, we have extracted the nature of grievous injuries sustained by the first respondent, period of treatment, both as in-patient and out-patient, for a period of 7 months. There is evidence to prove that portion of skull measuring 8 cms x 6 cms has been removed and replaced with artificial skull. Both P.Ws.2 and 3 Doctors have categorically deposed that the injuries, as grievous. Injuries sustained, disablement occurred, have not been disputed. We have given our due consideration to the submission of the learned counsel for the Insurance Company, appellant herein and going through the award, hold that disablement of 32%, assessed by P.W.2 Doctor, cannot be said to be erroneous.

11. Question to be decided is whether the functional disablement suffered by the injured, in the case on hand would affect his loss of earning capacity. The Hon'ble Supreme Court in Raj Kumar v. Ajay Kumar reported in 2011 ACJ 1 (SC), at Paragraphs 4 to 17, held as follows:

"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)].

15. After the insertion of section 163A in the Act (with effect from 14.11.1994), if a claim for compensation is made under that section by an injured alleging disability, and if the quantum of loss of future earning claimed, falls under the second schedule to the Act, the Tribunal may have to apply the following principles laid down in Note (5) of the Second Schedule to the Act to determine compensation :

"5. Disability in non-fatal accidents :

The following compensation shall be payable in case of disability to the victim arising out of non-fatal accidents : -

Loss of income, if any, for actual period of disablement not exceeding fifty two weeks.

PLUS either of the following :-

(a) In case of permanent total disablement the amount payable shall be arrived at by multiplying the annual loss of income by the Multiplier applicable to the age on the date of determining the compensation, or

(b) In case of permanent partial disablement such percentage of compensation which would have been payable in the case of permanent total disablement as specified under item (a) above.

Injuries deemed to result in Permanent Total Disablement/Permanent Partial Disablement and percentage of loss of earning capacity shall be as per Schedule I under Workmen's Compensation Act, 1923."

16. We may in this context refer to the difficulties faced by claimants in securing the presence of busy Surgeons or treating Doctors who treated them, for giving evidence. Most of them are reluctant to appear before Tribunals for obvious reasons either because their entire day is likely to be wasted in attending the Tribunal to give evidence in a single case or because they are not shown any priority in recording evidence or because the claim petition is filed at a place far away from the place where the treatment was given. Many a time, the claimants are reluctant to take coercive steps for summoning the Doctors who treated them, out of respect and gratitude towards them or for fear that if forced to come against their wishes, they may give evidence which may not be very favorable. This forces the injured claimants to approach 'professional' certificate givers whose evidence most of the time is found to be not satisfactory. Tribunals should realize that a busy Surgeon may be able to save ten lives or perform twenty surgeries in the time he spends to attend the Tribunal to give evidence in one accident case. Many busy Surgeons refuse to treat medico-legal cases out of apprehension that their practice and their current patients will suffer, if they have to spend their days in Tribunals giving evidence about past patients. The solution does not lie in coercing the Doctors to attend the Tribunal to give evidence. The solution lies in recognizing the valuable time of Doctors and accommodating them. Firstly, efforts should be made to record the evidence of the treating Doctors on commission, after ascertaining their convenient timings. Secondly, if the Doctors attend the Tribunal for giving evidence, their evidence may be recorded without delay, ensuring that they are not required to wait. Thirdly, the Doctors may be given specific time for attending the Tribunal for giving evidence instead of requiring them to come at 10.30 A.M. or 11.00 A.M. and wait in the Court Hall. Fourthly, in cases where the certificates are not contested by the respondents, they may be marked by consent, thereby dispensing with the oral evidence. These small measures as also any other suitable steps taken to ensure the

availability of expert evidence, will ensure assessment of just compensation and will go a long way in demonstrating that Courts/Tribunals show concern for litigants and witnesses. Assessment of compensation.

17. In this case, the Tribunal acted on the disability certificate, but the High Court had reservations about its acceptability as it found that the injured had been treated in the Government Hospital in Delhi whereas the disability certificate was issued by a District Hospital in the State of Uttar Pradesh. The reason given by the High Court for rejection may not be sound for two reasons. Firstly though the accident occurred in Delhi and the injured claimant was treated in a Delhi Hospital after the accident, as he hailed from Chirori Mandi in the neighbouring District of Ghaziabad in Uttar Pradesh, situated on the outskirts of Delhi, he might have continued the treatment in the place where he resided. Secondly the certificate has been issued by the Chief Medical Officer, Ghaziabad, on the assessment made by the Medical Board which also consisted of an Orthopaedic Surgeon. We are therefore of the view that the High Court ought not to have rejected the said disability certificate."

12. Having regard to the nature of injuries sustained by the first respondent, more particularly, in head, and the extent of disablement assessed, as 32% and correlating the same, to the avocation pleaded and proved, taking note of the judgment in Rajkumar's case, we are of the view that no error is committed by the Tribunal, in applying multiplier method, for the purpose of computing the loss of future earning. Contention that the injured could still earn the same income, in spite of disablement, cannot be accepted.

13. It is also to be seen that though the Tribunal has determined the extent of disability as 32%, based on Ex.P.18 disability certificate, there is no award under the head disability compensation.

14. On the contention, as to whether the Tribunal was right in determining the annual income as Rs.1,61,392/-, on the basis of Ex.P.17, returns for the year 2010 - 11, posterior to the date of accident, it could be seen that as per Ex.P.15, the said Company has been registered with the competent authority, even in the year 2007, prior to the date of accident. Ex.P.14 partnership deed has been marked. Injured is stated to have studied M.B.A. Ex.P.13 College Identity card has been marked. Ex.P.16 is the identity card issued by the income tax department. From the above, it could be deduced that the first respondent/claimant would have earned a reasonable income from the date of registration of

the Company in the year 2009. Though no income tax return has been filed, for the relevant assessment year 2009 - 2010, the possibility of earning income, through the Company with a profit margin to the extent of Rs.1,61,392/- per annum cannot be ruled out. Monthly earning would be Rs.13,450/-. Added further, judicial notice can be taken that Tirupur District is one of the contributors to the Gross Domestic Product.

15. From the impugned judgment it could be seen that the Tribunal has not awarded any compensation under the head loss of amenities. The respondent/insured has been hospitalised for a considerable period with grievous injuries, in the head and underwent two surgeries. He would have certainly engaged an attendant, for which, Tribunal has not granted any compensation. Quantum of compensation awarded under other heads appears to be reasonable. As per the decision in Nagappa, interest on future medical expenses, ought not to have been ordered. Hence interest on future prospects alone has to be deleted.

16. In the light of the above discussion and decisions, compensation of Rs.16,14,109/-, is sustained. Except, interest on future medical expenses, M/s. National Insurance Company Limited, Kangayam, is directed to deposit the entire award amount with costs to the credit of M.C.O.P.No.1011 of 2012, on the file of the Motor Accident Claims Tribunal (Principal Subordinate Judge), Tiruppur, within a period of four weeks, from the date of receipt of a copy of this order.

17. In the result, this Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

mvs

To

The Motor accident Claims Tribunal,
(Principal Subordinate Judge),
Tiruppur.

+1cc to Ms.R.Sreevidhya, Advocate, S.R.No.17872

+1cc to Mr.C.Munusamy, Advocate, S.R.No.17150

Civil Miscellaneous Appeal No.1023 of 2017

SKS (CO)

<https://hcservices.courts.gov.in/hcservices/>

CA(16/06/2017)