

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.02.2017

CORAM :

THE HONOURABLE MR.JUSTICE S.MANIKUMAR

AND

THE HONOURABLE MR. JUSTICE M.GOVINDARAJ

C.M.A.No.1098 of 2017

C.M.P.No.5435 of 2017

The Reliance General Insurance Co. Ltd.,
Sri Lakshmi Complex,
1st Floor, Sarathy Street,
Omalar Main Road,
Swarnapuri, Salem 636 004
Salem. ... Appellant

Vs...

1.Ramesh 1st Respondent/Claimant
2.Sudarsanam 2nd Respondent/1st Respondent

Prayer : Civil Miscellaneous Appeal filed under Section 173 Motor Vehicles Act, 1988 against the Judgment and decree, dated 29.04.2013, made in M.C.O.P.No.174 of 2010, on the file of the Motor Accidents Claims Tribunal (Sub Court), Ariyalur.

For Appellant : Mr.S.Arun Kumar

J U D G M E N T

(Judgement of this Court was made by S.MANIKUMAR, J.)

In the accident, which occurred on 01.04.2010, involving a lorry, bearing Registration No.TN 09 AJ 3207, owned by the 2nd respondent herein and insured with the appellant-Insurance Company, 1st respondent herein, sustained injuries. There was amputation of his right leg below knee and left leg upto hip. According to him, being a JCP Driver, he lost his earning capacity. He claimed compensation of Rs.31,50,000/-. On evaluation of pleadings, evidence and considering the nature of injuries, the Tribunal, by applying multiplier method, awarded Rs.26,71,856/- as compensation, with interest, at the rate of 7.5% per annum, from the date of claim, till deposit. Being aggrieved, Insurance Company is on appeal.

2. Mr.S.Arun Kumar, learned counsel appearing for the appellant-Insurance Company submitted that when there is no proof of loss of earning, the Tribunal has erred in taking 100% permanent disablement. Further, erred in applying multiplier method, in awarding compensation of Rs.18,71,856/-. He further submitted that in the absence of admissible evidence, twin compensation of Rs.3,00,000/- each, for medical expenses and medical bills, is unsustainable. Except the above, there is no other submission.

Heard the learned counsel appearing for the appellant-Insurance Company and perused the materials available on record.

3. PW.1, respondent/claimant, in his evidence, has deposed that in the accident, he sustained injuries in both legs and took treatment in various hospitals. According to him, at the time of accident, he was a JCB driver, working under one Muruganantham and earned Rs.13,000/- per month. He incurred a sum of Rs.1,00,000/- for replacement of artificial limbs. To support his claim, he has marked documents, Exs.P2 and P3 - Discharge Summaries, Ex.P8 - Prescriptions issued by Vinodhagan Hospital, Ex.P9 - Medical Report issued by Golden Hospital and Ex.P15 - X-Rays.

4. PW.2, Dr.Kanmani, who examined the respondent/claimant, with reference to the medical records, has issued Ex.P14 - Disability Certificate. PW.2, has stated that both the legs of the respondent/claimant have been amputated and that he has suffered 100% disablement. Artificial limbs have been purchased. On the basis of Exs.P4 and P5 (series) - Medical receipts issued by Dhanvantri Medicals, Ex.P6 (series) - Medical Bills issued by Amman Agencies, Vinodhagan Hospital, Annamalai Agency, M.M. Pharmacy, and Dhanvantri Medicals and Ex.P7 - Receipt for getting blood from Satilite Blood Bank, the Tribunal has awarded compensation of Rs.3,00,000/- under the head, medical expenses.

5. At the time of accident, injured was aged 28 years. Determining the monthly income of the respondent/claimant, driver, as Rs.13,000/-, the Claims Tribunal, applied multiplier method for 100% disablement, for the purpose of computing the loss of earning capacity. After deducting 1/3rd towards personal and living expenses of the injured, the Claims Tribunal has applied '18' multiplier and awarded compensation of Rs.18,71,856/- (Rs.8,666/- x 12 x 18 x 100%), towards loss of earning capacity.

6. In K.Janardhan v. United India Insurance Co. Ltd., reported in 2008 (8) SCC 518, a tanker lorry driver suffered serious injuries in a motor accident and as a result, his right

leg was amputated upto knee joint. He made a claim under the Workmen's Compensation Act, 1923. The Commissioner for Workmen's Compensation held that the disability suffered by him, as a result of the loss of the leg was 100% and on that basis, awarded compensation. On appeal, referring to the Schedule to the Workmen's Compensation Act, 1923, the High Court held that the loss of leg, on amputation, amounted to reduction in the earning capacity by 60% and accordingly, reduced the compensation awarded to the tanker lorry driver. On further appeal, the Hon'ble Supreme Court, by referring to an earlier decision in Pratap Narain Singh Deo v. Srinivas Sabata reported in 1976 (1) SCC 289, set aside the judgment of the High Court and held that the tanker lorry driver suffered 100% disability, as his right leg had been amputated from the knee and restored the order passed by the Commissioner for Workmen's Compensation Act.

7. In Rajkumar v. Ajay Kumar reported in 2011 (1) SCC 343, the Hon'ble Supreme Court considered the co-relation between physical disability suffered by an injured and loss of earning capacity, resulting from it. At Paragraphs 10, 11 and 13, the Hon'ble Apex Court observed as follows:

"10. 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.

11. 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).

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13. 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."

8. Amputation in both legs is not disputed. Loss of amenities as per the Hon'ble Full Bench decision of this Court in Cholan Roadways Corporation Ltd., Kumbakonnam vs. Ahmed Thambi and others reported in 2006 (4) CTC 433, is as follows:

"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",

9. In Govind Yadav vs. The New India Insurance Company Limited, reported in (2011) 10 SCC 683, the Hon'ble Supreme Court awarded a sum of Rs.1,50,000/- for loss of amenities and enjoyment of life, in the case of amputation, where disability

was assessed at 70%. In the said judgment, the Hon'ble Apex Court held as follows:

"10. The personal sufferings of the survivors and disabled persons are manifold. Some time they can be measured in terms of money but most of the times it is not possible to do so. If an individual is permanently disabled in an accident, the cost of his medical treatment and care is likely to be very high. In cases involving total or partial disablement, the term 'compensation' used in Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act') would include not only the expenses incurred for immediate treatment, but also the amount likely to be incurred for future medical treatment/care necessary for a particular injury or disability caused by an accident. A very large number of people involved in motor accidents are pedestrians, children, women and illiterate persons. Majority of them cannot, due to sheer ignorance, poverty and other disabilities, engage competent lawyers for proving negligence of the wrongdoer in adequate measure. The insurance companies with whom the vehicles involved in the accident are insured usually have battery of lawyers on their panel. They contest the claim petitions by raising all possible technical objections for ensuring that their clients are either completely absolved or their liabilities minimized. This results in prolonging the proceedings before the Tribunal. Sometimes the delay and litigation expenses' make the award passed by the Tribunal and even by the High Court (in appeal) meaningless. It is, therefore, imperative that the officers, who preside over the Motor Accident Claims Tribunal adopt a proactive approach and ensure that the claims filed under Sections 166 of the Act are disposed of with required urgency and compensation is awarded to the victims of the accident and/or their legal representatives in adequate measure. The amount of compensation in such cases should invariably include pecuniary and non-pecuniary damages. In *R.D.Hattangadi v. Pest Control (India) Private Limited*, (1995) 1 SCC 551, this Court while dealing with a case involving claim of compensation under the Motor Vehicles Act, 1939, referred to the judgment of the Court of Appeal in *Ward v. James* (1965) 1 All ER 563, Halsbury's Laws of England, 4th Edition, Volume

12 (page 446) and observed:

"Broadly speaking while fixing an amount of compensation payable to a victim of an accident, the damages have to be assessed separately as pecuniary damages and special damages. Pecuniary damages are those which the victim has actually incurred and which are capable of being calculated in terms of money; whereas non-pecuniary damages are those which are incapable of being assessed by arithmetical calculations. In order to appreciate two concepts pecuniary damages may include expenses incurred by the claimant: (i) medical attendance; (ii) loss of earning of profit up to the date of trial; (iii) other material loss. So far non-pecuniary damages are concerned, they may include (i) damages for mental and physical shock, pain and suffering, already suffered or likely to be suffered in future; (ii) damages to compensate for the loss of amenities of life which may include a variety of matters i.e. on account of injury the claimant may not be able to walk, run or sit; (iii) damages for the loss of expectation of life, i.e., on account of injury the normal longevity of the person concerned is shortened; (iv) inconvenience, hardship, discomfort, disappointment, frustration and mental stress in life."

In the same case, the Court further observed:

"In its very nature whenever a tribunal or a court is required to fix the amount of compensation in cases of accident, it involves some guesswork, some hypothetical consideration, some amount of sympathy linked with the nature of the disability caused. But all the aforesaid elements have to be viewed with objective standards."

11. In Nizam's Institute of Medical Sciences v Prasanth S.Dhananka (2009) 6 SCC 1, the three-Judge Bench was dealing with a case arising out of the complaint filed under the Consumer Protection Act, 1986. While enhancing the compensation awarded by the National Consumer Disputes Redressal Commission from Rs.15 lakhs to Rs.1 crore, the Bench made the following observations which can appropriately be applied for deciding the petitions filed under Section 166 of the Act:

"We must emphasise that the court has to strike a balance between the inflated and

unreasonable demands of a victim and the equally untenable claim of the opposite party saying that nothing is payable. Sympathy for the victim does not, and should not, come in the way of making a correct assessment, but if a case is made out, the court must not be chary of awarding adequate compensation. The "adequate compensation" that we speak of, must to some extent, be a rule of thumb measure, and as a balance has to be struck, it would be difficult to satisfy all the parties concerned.

At the same time we often find that a person injured in an accident leaves his family in greater distress vis-a-vis a family in a case of death. In the latter case, the initial shock gives way to a feeling of resignation and acceptance, and in time, compels the family to move on. The case of an injured and disabled person is, however, more pitiable and the feeling of hurt, helplessness, despair and often destitution enures every day. The support that is needed by a severely handicapped person comes at an enormous price, physical, financial and emotional, not only on the victim but even more so on his family and attendants and the stress saps their energy and destroys their equanimity." (emphasis supplied)

12. In *Reshma Kumari v. Madan Mohan*, (2009) 13 SCC 422, this Court reiterated that the compensation awarded under the Act should be just and also identified the factors which should be kept in mind while determining the amount of compensation. The relevant portions of the judgment are extracted below:

"The compensation which is required to be determined must be just. While the claimants are required to be compensated for the loss of their dependency, the same should not be considered to be a windfall. Unjust enrichment should be discouraged. This Court cannot also lose sight of the fact that in given cases, as for example death of the only son to a mother, she can never be compensated in monetary terms. The question as to the methodology required to be applied for determination of compensation as regards prospective loss of future earnings, however, as far as possible should be based on certain principles. A person may have a bright future prospect; he might have become eligible to promotion immediately; there might have been

chances of an immediate pay revision, whereas in another (sic situation) the nature of employment was such that he might not have continued in service; his chance of promotion, having regard to the nature of employment may be distant or remote. It is, therefore, difficult for any court to lay down rigid tests which should be applied in all situations. There are divergent views. In some cases it has been suggested that some sort of hypotheses or guess work may be inevitable. That may be so.

In the Indian context several other factors should be taken into consideration including education of the dependants and the nature of job. In the wake of changed societal conditions and global scenario, future prospects may have to be taken into consideration not only having regard to the status of the employee, his educational qualification; his past performance but also other relevant factors, namely, the higher salaries and perks which are being offered by the private companies these days. In fact while determining the multiplicand this Court in *Oriental Insurance Co. Ltd. v. Jashuben* held that even dearness allowance and perks with regard thereto from which the family would have derived monthly benefit, must be taken into consideration.

One of the incidental issues which has also to be taken into consideration is inflation. Is the practice of taking inflation into consideration wholly incorrect? Unfortunately, unlike other developed countries in India there has been no scientific study. It is expected that with the rising inflation the rate of interest would go up.

In India it does not happen. It, therefore, may be a relevant factor which may be taken into consideration for determining the actual ground reality. No hard-and-fast rule, however, can be laid down therefor." (emphasis supplied)

13. In *Arvind Kumar Mishra v. New India Assurance Company Limited*, (2010) 10 SCC 254, the Court considered the plea for enhancement of compensation made by the appellant, who was a student of final year of engineering and had suffered 70% disablement in a motor accident. After noticing factual matrix of the case, the Court observed:

"We do not intend to review in detail state

of authorities in relation to assessment of all damages for personal injury. Suffice it to say that the basis of assessment of all damages for personal injury is compensation. The whole idea is to put the claimant in the same position as he was insofar as money can. Perfect compensation is hardly possible but one has to keep in mind that the victim has done no wrong; he has suffered at the hands of the wrongdoer and the court must take care to give him full and fair compensation for that he had suffered." (emphasis supplied)

14. In *Raj Kumar v. Ajay Kumar* (2011) 1 SCC 343, the Court considered some of the precedents and held:

"The provision of the Motor Vehicles Act, 1988 ("the 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 the 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.

The heads under which compensation is awarded in personal injury cases are the following:

Pecuniary damages (Special damages)

(i) Expenses relating to treatment, hospitalisation, 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." (emphasis supplied)

15. In our view, the principles laid down in *Arvind Kumar Mishra v. New Assurance Company Ltd.*, (supra) and *Raj Kumar v. Ajay Kumar* (supra) must be followed by all the Tribunals and the High Courts in determining the quantum of compensation payable to the victims of accident, who are disabled either permanently or temporarily. If the victim of the accident suffers permanent disability, then efforts should always be made to award adequate compensation not only for the physical injury and treatment, but also for the loss of earning and his inability to lead a normal life and enjoy amenities, which he would have enjoyed but for the disability caused due to the accident.

16. We shall now consider whether the compensation awarded to the appellant is just and reasonable or he is entitled to enhanced compensation under any of the following heads:

(i) Loss of earning and other gains due to the amputation of leg.

(ii) Loss of future earnings on account of permanent disability.

(iii) Future medical expenses.

(iv) Compensation for pain, suffering and trauma caused due to the amputation of leg.

(v) Loss of amenities including loss of the prospects of marriage.

(vi) Loss of expectation of life."

10. In Govind Yadav's case, in the case of amputation and considering the cost of living, cost of artificial limbs, and the expenses likely to be incurred for periodical replacement of the artificial limb, the Hon'ble Supreme Court awarded Rs.2,00,000/- to the appellant therein, for future treatment. The Hon'ble Apex Court also awarded a sum of Rs.1,50,000/- for pain and suffering and trauma caused due to the amputation of leg. By observing that even if the victims of an accident gets an artificial limb, he will still suffer from different kinds of social stigma throughout of his life, the Hon'ble Supreme Court further observed that in all such cases, the Tribunals and Courts should make a broad guess for the purpose of compensation and that the fact that the injured has to live for the rest of his life, with one leg and would not able to life like a normal human being and enjoy the life and of the likelihood of reduction in marriage prospects. So saying, awarded Rs.1,50,000/- for loss of amenities and enjoyment of life.

11. In Mohan Soni v. Ram Avtar Tomar reported in 2012 (2) SCC 267, the Hon'ble Supreme Court held that reduction of the earning capacity, with reference to Schedule I of the Workmen's Compensation Act, 1923, in the case of amputation above knee to a Cart-Puller, due to the injuries sustained in a motor accident, is erroneous and referring to the decisions made in Pratap Narain Singh Deo v. Srinivas Sabata reported in 1976 (1) SCC 289 and K. Janardhan v. United India Insurance Co. Ltd., reported in 2008 (8) SCC 518, assessed the loss of earning capacity as 100% and enhanced the compensation. While advertng to the arguments of scaling down the compensation, at Paragraph 13, the Hon'ble Supreme Court observed as follows:

"13. 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 vocation or by adopting another means of livelihood. The party advocating for a lower amount of compensation for that reason must plead and show before the Tribunal that the victim enjoyed some legal protection (as in the case of persons covered by The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995) or in case of the vast multitude who earn their livelihood in the unorganized sector by leading cogent evidence that the victim had in fact changed his vocation or the means of his livelihood and by virtue of such change he was deriving a certain income."

12. In Rekha Jain v. National Insurance Company Ltd., reported in 2013 (8) SCC 389, on the aspect of estimation of

pecuniary and non-pecuniary damages, due to the bodily injuries, sustained by the injured and taking into account, as to how, the bodily injury would affect loss of earning capacity, at Paragraph 28, the Hon'ble Supreme Court, while enhancing the compensation, observed as follows:

"28. This Court is required to keep in mind justice, equity and good conscience which must be the primary, relevant and important aspects for awarding just and reasonable compensation to an unfortunate victim, the appellant herein who has sustained grievous injuries to her body and whose future prospects are completely doomed. Further, the Tribunal and courts while awarding compensation for bodily injuries, must realise that the possession of one's own body is the first and most valuable of all human rights and that all other possessions and ownership are the extensions of the basic right. Bodily injuries should be equated with the deprivation which entitles a claimant to damages and the amount of damages varies in accordance with the gravity of injuries."

13. It is also worthwhile to reproduce the decisions considered in Rekha Jain's case, for understanding the principles of law, to be followed by the Courts/Tribunals, in estimating the loss of earning capacity,

"In this regard, it is worthwhile to refer to certain paragraphs which have been referred to by the High Court in the case of K. Narasimha Murthy vs. The Manager, Oriental Insurance Company Limited and Anr. [ILR 2004 Karnataka 2471], wherein the Division Bench of the Karnataka High Court has considered the relevant important aspects from the judgment of this Court and the House of Lords and different learned scholars and authors of books on awarding pecuniary and non pecuniary damages. The abovementioned decision states about the approach of the Motor Accidents Claim Tribunals and Courts for awarding just and reasonable compensation in favour of the claimants in relation to the bodily injuries suffered by them. It is worthwhile to extract Paragraph 16 from K. Narasimha Murthy case (supra), which reads as under:

"16. The Courts and Tribunals, in bodily injury cases, while assessing compensation, should take into account all relevant circumstances, evidence, legal principles governing quantification of compensation. Further, they have to approach the issue of awarding compensation on the larger perspectives of justice, equity and good conscience and eschew technicalities in the decision-making. There should be realisation on

the part of the Tribunals and Courts that the possession of one's own body is the first and most valuable of all human rights, and that all possessions and ownership are extensions of this primary right, while awarding compensation for bodily injuries. Bodily injury is to be treated as a deprivation which entitles a claimant to damages. The amount of damages varies according to gravity of injuries."

30. In *R.D. Hattangadi v. Pest Control (India) Private Limited and Ors.* [1995 (1) SCC 551], speaking about the heads of compensation, this Court has held thus:

"9. Broadly speaking while fixing an amount of compensation payable to a victim of an accident, the damages have to be assessed separately as pecuniary damages and special damages. Pecuniary damages are those which the victim has actually incurred and which is capable of being calculated in terms of money; whereas non-pecuniary damages are those which are incapable of being assessed by arithmetical calculations. In order to appreciate two concepts pecuniary damages may include expenses incurred by the claimant: (i) medical attendance; (ii) loss of earning profit upto the date of trial; (iii) other material loss. So far non-pecuniary damages are concerned, they may include; (i) damages for mental and physical shock, pain suffering, already suffered or likely to be suffered in future; (ii) damages to compensate for the loss of amenities of life which may include a variety of matters, i.e., on account of injury the claimant may not be able to walk, run or sit; (iii) damages for the loss of expectation of life, i.e., on account of injury the normal longevity of the person concerned is shortened; (iv) inconvenience, hardship, discomfort, disappointment, frustration and mental stress in life."

31. Further, on this point, Justice Viscount Dunedin in *Admiralty Comrs v. S.S. Valeria* [(1922) 2 A.C. 242 at p. 248], has observed thus:

"The true method of expression, I think, is that in calculating damages you are to consider what is the pecuniary consideration which will make good to the sufferer, as far as money can do so, the loss which he has suffered as the natural result of the wrong done to him".

32. Further, Lord Blackburn in *Livingstone v. Rawyards Coal Company* [1880 5 App. Cas. 25 at p. 39], has held as under:

"Where any injury is to be compensated by damages, in settling the sum of money to be given. . . . you

should as nearly as possible get at that sum of money which will put the person who has been injured. . . . in the same position as he would have been in if he had not sustained the wrong."

33. Lord Morris in his memorable speech in *H. West and Sons* [1964 AC 326] , pointed out this aspect in the following words:

"Money may be awarded so that something tangible may be procured to replace of like nature which has been destroyed or lost. But, the money cannot renew a physical frame that has been battered and shattered. All the Judges and Courts can do is to award sums which must be regarded as giving reasonable compensation. In the process there must be the endeavour to secure some uniformity in the general method of approach. By common assent awards must be reasonable and must be assessed with moderation. Further, more it is eminently desirable that so far as possible comparative injuries should be compensated by comparable awards."

34. In *Ward v. James* [1966 1 Q.B. 273 at pp. 299-300], speaking for the Court of Appeal in England, Lord Denning laid down three basic principles while dealing with the question of awarding compensation for personal injury:

"...Firstly, assess ability: In cases of grave injury, where the body is wrecked or brain destroyed, it is very difficult to assess a fair compensation in money, so difficult that the award must basically be a conventional figure, derived from experience or from awards in comparable cases. Secondly, uniformity: There should be some measure of uniformity in awards so that similar decisions may be given in similar cases, otherwise, there will be great dissatisfaction in the community and much criticism of the administration of justice. Thirdly, predictability: Parties should be able to predict with some measure of accuracy the sum which is likely to be awarded in a particular case, for by this means cases can be settled peaceably and not brought to Court, a thing very much to the public good."

"24. In deciding on the quantum of damages to be paid to a person for the personal injury suffered by him, the Court is bound to ascertain all considerations which will make good to the sufferer of the injuries, as far as money can do, the loss which he has suffered as. a natural consequence of the wrong done to him."

35. Further, a Division Bench of Karnataka High Court in *Basavaraj v. Shekar* [ILR 1987 Kar. 1399],

has held as under:

"8.If the original position cannot be restored - as indeed in personal injury or fatal accident cases it cannot obviously be - the law must endeavour to give a fair equivalent in money, so far as money can be an equivalent and so 'make good' the damage.

"26. Therefore, the general principle which should govern the assessment of damages in personal injury cases is that the Court should award to injured person such a sum of money as will put him in the same position as he would have been in if he had not sustained the injuries. But, it is manifest that no award of money can possibly compensate an injured man and renew a shattered human frame." (Emphasis laid by the Court)

36. Lord Morris of Borth-y-Gest in Parry v. Cleaver [[1970] 1 AC 1 at p. 22], has said:

"To compensate in money for pain and for physical consequences is invariably difficult but. . . no other process can be devised than that of making a monetary assessment". (Emphasis laid by the Court)

37. The necessity that the damages should be full and adequate was stressed by the Court of Queen's Bench in Fair v. London and North Western Railway Company [21 L.T. (N.S.) 326 (1869)]. In Rushton v. National Coal Board [1953 1 QB 495 at p. 499], Singleton L.J. has said that:

"When damages have to be assessed in a case of this kind there are many elements for consideration: the pain and suffering undergone and that which may occur in the future; the loss of some of the amenities of life; the fact that a man with an injury of this kind will always require some measure of help, even though he may be able to earn considerable money. These are some of the matters which have to be taken into consideration, and another is the fact that his earnings will probably be less than they were before." (Emphasis laid by the Court)

38. In Fowler v. Grace [(1970) 114 Sol. Jo.193], Edmund Davies, L.J., has said that :

"It is the manifest duty of the Tribunal to give as perfect a sum as was within its power'. There are many losses which cannot easily be expressed in terms of money. If a person, in an accident, loses his sight, hearing or smelling faculty or a limb, value of such deprivation cannot be assessed in terms of market value because there is no market value for the personal asset which has been lost in the accident, and there is no easy way of expressing its equivalent

in terms of money. Nevertheless a valuation in terms of money must be made, because, otherwise, the law would be sterile and not able to give any remedy at all. Although accuracy and certainty were frequently unobtainable, a fair assessment must be made. Although undoubtedly there are difficulties and uncertainties in assessing damages in personal injury cases, that fact should not preclude an assessment as best as can, in the circumstances be made." (Emphasis laid by the Court)

40. It is well-settled principle that in granting compensation for personal injury, the injured has to be compensated (1) for pain and suffering; (2) for loss of amenities; (3) shortened expectation of life, if any; (4) loss of earnings or loss of earning capacity or in some cases for both; and (5) medical treatment and other special damages. In personal injury cases the two main are the personal loss and pecuniary loss. Chief Justice Cockburn in Fair's case [(1869) 21 LT (NS) 326 (QB)], supra, distinguished the above two aspects thus:

"In assessing the compensation the jury should take into account two things, first, the pecuniary loss the plaintiff sustains by the accident : secondly, the injury he sustains in his person, or his physical capacity of enjoying life. When they come to the consideration of the pecuniary loss they have to take into account not only his present loss, but his incapacity to earn a future improved income".

41. McGregor on Damages (14th Edition) at paragraph no.1157, referring to the heads of damages in personal injury actions, states as under:

"The person physically injured may recover both for his pecuniary losses and his nonpecuniary losses. Of these the pecuniary losses themselves comprise two separate items, viz., the loss of earnings and other gains which the plaintiff would have made had he not been injured and the medical and other expenses to which he is put as a result of the injury, and the Courts have sub-divided the non-pecuniary losses into three categories, viz., pain and suffering, loss of amenities of life and loss of expectation of life".

Besides, the Court is well-advised to remember that the measures of damages in all these cases 'should be such as to enable even a tortfeasor to say that he had amply atoned for his misadventure'. The observation of Lord Devlin that the proper approach to the problem or to adopt a test as to what contemporary society would deem to be a fair sum, such as would allow the wrongdoer to 'hold up his head among his

neighbours and say with their approval that he has done the fair thing', is quite apposite to be kept in mind by the Court in assessing compensation in personal injury cases." (Emphasis laid by the Court)

42. In *R. Venkatesh v. P. Saravanan & Ors.* [(2001) 1 Kant.LT 41], the High Court of Karnataka while dealing with a personal injury case wherein the claimant sustained certain crushing injuries due to which his left lower limb was amputated, held that in terms of functional disability, the disability sustained by the claimant is total and 100% though only the claimant's left lower limb was amputated. In paragraph 9 of the judgment, the Court held as under:

"9. As a result of the amputation, the claimant had been rendered a cripple. He requires the help of crutches even for walking. He has become unfit any kind of manual work. As he was earlier a loader doing manual work, the amputation of his left leg below knee, has rendered him unfit for any kind of manual work. He has no education. In such cases, it is well-settled that the economic and functional disability will have to be treated as total, even though the physical disability is not 100 per cent".

43. Lord Reid in *Baker v. Willoughby* [1970 AC 467], has said: "A man is not compensated for the physical injury; he is compensated for the loss which he suffers as a result of that injury. His loss is not in having a stiff leg; it is in his inability to lead a full life, his inability to enjoy those amenities which depend on freedom of movement and his inability to earn as much as he used to earn or could have earned... ."

14. Reverting to the case on hand, the respondent has sustained grievous injuries, resulting in amputation of both legs. Right leg below knee and left leg upto hip. He has adduced evidence to substantiate his avocation, 'driver'. Amputation of both legs would disable him permanently, from driving any vehicle. In the light of the decisions, stated supra, estimation of loss of earning capacity, cannot be said to be erroneous.

15. Though the Hon'ble Apex Court in *New India Assurance Co. Ltd. v. Charlie & Anr* reported in (2005) 10 SCC 720, held that in the case of 100% disablement, there should not be any deduction, towards personal and living expenses of the injured, in the case on hand, the Tribunal has deducted 1/3rd from loss of earning, which is erroneous. Though it was contended that due to amputation, the respondent has lost his amenities, the Tribunal has not granted any compensation under the abovesaid head.

16. As stated supra, in Govind Yadav's case, in case of amputation and considering the cost of living, cost of artificial limbs, and the expenses likely to be incurred for periodical replacement of the limb, the Hon'ble Apex Court has awarded Rs.2,00,000/- to the appellant therein, for future treatment. The Hon'ble Apex Court has also awarded a sum of Rs.1,50,000/- for pain and suffering and trauma caused due to amputation of leg. A further sum of Rs.1,50,000/- has been awarded under the head, loss of amenities and enjoyment of time.

17. Contention of Mr.S.Arun Kumar, learned counsel for the appellant that there was double compensation under the head, medical expenses, cannot be accepted, for the reason that the same is supported by documents. Having regard to the decisions of the Hon'ble Apex Court, stated supra, inadequacy of compensation under the head pain and suffering, failure to award compensation under the head, loss of amenities, future medical expenses and deduction of 1/3rd, this Court is not inclined to reduce the quantum of compensation awarded to the respondent/claimant. Hence, the quantum of compensation, awarded by the Tribunal, is sustained.

18. In the result, the Civil Miscellaneous Appeal is dismissed. The appellant-Insurance Company is directed to deposit the award amount, with the proportionate accrued interests and costs, less the amount already deposited, to the credit of M.C.O.P.No.174 of 2010, on the file of the Motor Accidents Claims Tribunal (Sub Court), Ariyalur, within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the respondent/claimant is permitted to withdraw the same, by making necessary applications before the Tribunal. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

skm

To

1 The Motor Accidents Claims Tribunal,
(Sub Court), Ariyalur.

+1cc to Mr.S. Kaithamalai Kumaran, Advocate, S.R.No.12854

kgk (CO)

md (20/04/2017)

C.M.A.No.1098 of 2017



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