IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.04.2017

CORAM :

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
AND
THE HONOURABLE MR. JUSTICE M.GOVINDARAJ

C.M.A.No.25 of 2016
C.M.P.Nos.125 and 4488 of 2016

The Branch Manager,
M/s.New India Assurance Co. Ltd.,
Nagappatinam District & Munsif. ... Appellant

Vs...

1.Jothibasu (Died)
2.Muthulakshmi
3.Indirani
4.Prakash
5.Minor Yamuna ... Respondents
(Minor is represented by her mother, 3rd respondent herein)
[Respondents 3 to 5 brought on record, LRS of the deceased 1st Respondent vide order of this Court made in C.M.P.No.3024/16, dated 23.02.2016]

Prayer : Civil Miscellaneous Appeal filed under Section 173 Motor Vehicles Act, 1988 against the Judgment and decree, dated 04.08.2015, made in M.C.O.P.No.123 of 2015, on the file of the Motor Accidents Claims Tribunal (Chief Judicial Magistrate), Nagapattinam.

For Appellant : Mr.J.Chandran
For 3 to 5 Respondent : Mr.Bharathachakravarthy for M/s.Sai, Bharath & Ilan

J U D G M E N T

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

Being aggrieved by the quantum of compensation of Rs.41,91,000/-, with interest at the rate of 7.5% per annum, from the date of claim, till deposit and costs, awarded in M.C.O.P.No.123 of 2015, on the file of the Motor Accidents

Claims Tribunal (Chief Judicial Magistrate), Nagapattinam, the Branch Manager, M/s.New India Assurance Co. Ltd., Nagappatinam District & Munsif, has filed the instant appeal.

2. Initially, Jothi Basu, sustained injuries in the accident, involving a Tata Indica Car, bearing Registration No.TN 51 C 7167, insured with the appellant-Insurance Company. A case in Cr.No.446 of 2014, has been registered, under Sections 279 and 337 IPC., on the file of the Velankanni Police Station. He filed M.C.O.P.No.123 of 2015, on the file of the Motor Accidents Claims Tribunal (Chief Judicial Magistrate), Nagapattinam, claiming compensation of Rs.50,00,000/-, under various heads.

3. In the claim petition, the injured contended that he had sustained injuries in the right leg, left and right elbow joint, right wrist joint and parietal region. He sustained a fracture in the hip and crush injury of his right leg thumb finger and other injuries all over his body. He was admitted in a Government General Hospital, Chennai, between 28.11.2014 and 18.12.2014. On 26.02.2015, his right leg was amputed above knee. Thereafter, he was discharged on 02.03.2015. Due to disablement, he lost his earning capacity and claimed Rs.50,00,000/- under various heads.

4. New India Assurance Co. Ltd., Nagappatinam, appellant herein, has disputed the manner of accident and contended that the driver of Tata Indica Car, bearing Registration No.TN 51 C 7167, had no valid and effective driving ligence, at the time of accident. Without prejudice to the above, the Company disputed the quantum of compensation, claimed under various heads.

5. During the pendency of the claim petition, Jothi Basu examined himself as PW.1 and reiterated the manner of accident, avocation, loss of income and the expenses incurred. PW.2 is the Doctor, who clinically examined him, with reference to the medical records. Ex.P1 - FIR, Ex.P2 - Motor Vehicles Inspector's Report, Ex.P3 - Insurance Policy, Ex.P4 - Driving Licence, Ex.P5 - Accident Register, Ex.P6 - Discharge Summary, Ex.P7 - Medical Legal Opinion Form, Ex.P8 - Documents of Rajiv Gandhi Hospital, Chennai, showing treatment details, Ex.P9 - Discharge Summary, Ex.P10 - Photographs and Negatives, Ex.P11 - Wound Certificate issued by Rajiv Gandhi Hospital, Chennai, Ex.P12 - Treatment records, Ex.P13 - Medical Bills, Ex.P14 - Scan report, Ex.P15 - Doctor's Note, Exs.P16 and P17 - X-Rays, Ex.P18 - Disability Certificate, Ex.P19 - Motor Vehicles Inspector's Report, Ex.P20 - Appointment Order, Ex.P21 - Probation Order, Ex.P22 - Reinstatement Order and Ex.P23 - Salary Certificate, have been marked. No oral or documentary evidence has been adduced by the

appellant-Insurance Comnpany.

6. Evaluating the pleadings and evidence, the Tribunal held that the driver of the Tata Indica Car, bearing Registration No.TN 51 C 7167, insured with the appellant-Insurance Company, was negligent, in causing the accident. Having regard to the medical evidence and Ex.P18 - Disability Certificate, the Claims Tribunal held that the respondent/claimant had lost his earning capacity. Having regard to the avocation, age, the Claims Tribunal awarded a sum of Rs.27,00,000/-. Added further, the Claims Tribunal estimated Rs.5,10,000/- for pain and suffering, Rs.3,00,000/-, for disability, Rs.6,000/- for medical expenses, Rs.50,000/- towards transportation, Rs.1,25,000/- for attendant charges, Rs.2,00,000/- for mental agony and Rs.3,00,000/- towards loss of social enjoyment. Altogether, the Claims Tribunal has awarded Rs.41,91,000/-, with interest at the rate of 7.5% per annum, from the date of claim, till deposit and costs.

7. Record of proceedings shows that during the pendency of this appeal, the injured died on 16.12.2015. Vide order, dated 23.02.2016, in C.M.P.No.3024 of 2016, wife and children of Jothi Basu, have been brought on record as legal representatives.

8. Inviting the attention of this Court to the observations of the Tribunal that the injured was working as a road worker, Mr.J.Chandran, learned counsel for the appellant-Insurance Company submitted that the Tribunal ought not to have awarded compensation for the loss of earning capacity. He further submitted that the Tribunal went wrong in taking permanent disability at 100%, instead of 50%, fixed in Schedule I of Employees Compensation Act, 1923, for amputation. He also submitted that the quantum of compensation of Rs.5,10,000/- awarded under the head, pain and suffering, Rs.1,25,000/- for attendant charges, Rs.2,00,000/- for mental agony and Rs.3,00,000/- towards loss of social enjoyment, is on the higher side.

9. Defending the quantum of compensation, Mr.Bharathachakravarthy, learned counsel for the respondents/claimants submitted that at the time of accident, he was a road worker (Salai Paniyalar). He was appointed on 29.10.1997 and his services were regularised on 15.05.1999. Though he was removed from service on 07.09.2002, lateron, he was reappointed on 13.02.2006. He sustained grievous injuries. Leg was amputed and assessed to have suffered 80% disablement.

10. Though inviting the attention of this Court to the Medical Certificate, dated 25.02.2016, produced at the appellate stage, wherein, PW.2, Doctor, has opined that some times, due to the amputation, fat globule may enter into blood stream and damage the brain and death can occur in post dramatic period and his personal opinion is that Jothibasu might have expired due to "Thrombo Embolic Phenomena", learned counsel appearing for the respondents/claimants submitted that death was due to the injuries/amputation, this Court is not inclined to accept the said contention, for the reason that there is absolutely no treatment records produced to support the same.

11. But the fact remains that the injured sustained grievous injuries and was inpatient in Government Hospital, Nagapattinam, from 28.11.2014 and 18.12.2014. When the injured was alive, he had deposed that on 10.02.2015, he was re-admitted in the hospital and his right leg was amputed on 26.02.2015. PW.2, Doctor, who clinically examined the injured, with reference to the medical records, has issued Ex.P18 - Disability Certificate, to support the same. Nature of injuries, period of treatment and disability suffered have been proved by documents, viz., Ex.P6 - Discharge Summary, Ex.P7 - Medical Legal Opinion Form, Ex.P8 - Documents of Rajiv Gandhi Hospital, Chennai, showing treatment details, Ex.P9 - Discharge Summary, Ex.P10 - Photographs and Negatives, Ex.P11 - Wound Certificate issued by Rajiv Gandhi Hospital, Chennai, Ex.P12 - Treatment records, Ex.P13 - Medical Bills, Ex.P14 - Scan report, Ex.P15 - Doctor's Note, Exs.P16 and P17 - X-Rays and Ex.P18 - Disability Certificate.

12. Taking note of the entry in Ex.P23 - Salary Certificate, for the month of February' 2015 and the decision of the Hon'ble Supreme Court in Mohan Soni v. Ram Avtar Tomar and others reported in 2012 (2) LW 305, wherein, it has been stated that if the extent of disablement is assessed more than 50%, then it can be considered as 100%, the Claims Tribunal has applied '15' multiplier and estimated the loss of earning as Rs.27,00,000/- (Rs.15,000/- x 12 x 15 x 100%).

13. Though Mr.J.Chandran, learned counsel for the appellant-Insurance Company submitted that there was no loss of earning, perusal of the proceednigs in K.No.285/2015/A1, dated 26.02.2016, issued by the Assistant Divisional Engineer, Construction and Maintenance, Nagapattinam, shows that between 28.11.2014 and 31.01.2015, the injured was paid salary of Rs.22,346/-. Details are extracted,

28.11.2014	One Day	Rs.513/-
From 19.12.2014 to 31.12.2014	13 Days	Rs.6,451/-

28.11.2014	One Day	Rs.513/-
From 01.01.2015 to 31.01.2015	31 Days	Rs.15,382/-
Total		Rs.22,346/-

As per the abovesaid proceedings, he was not paid for the following period, as follows:

From 29.11.2014 to 18.12.2014	20 Days
From 02.2015 to 11.2015	10 Months
From 01.12.2015 to 16.12.2015	16 Days

14. Thus, from the above details, it could be deduced that Jothi Basu/injured, was not paid salary continuously. There is loss of earning. Had he been alive, he would have pursued the instant appeal and obtained adequate compensation, on the basis of the extent of disablement suffered, co-relating with avocation pleaded. Tribunal has estimated pecuniary loss only as injury case. Therefore, we proceed to assess the loss, accordingly. At this juncture, this Court deems it fit to consider the decisions, on the aspect of awarding compensation for loss of earning capacity, as well as a separate compensation towards permanent disablement, assessed by the Doctor.

(i) In B.Kothandapani v. Tamil Nadu Transport Corporation Ltd., reported in 2011 (5) SCC 420, the Hon'ble Supreme Court held that an injured is entitled to claim compensation under both heads, disability and loss of earning capacity. Relevant passage is extracted hereunder:

> "It is true that the compensation for loss of earning power/capacity has to be determined based on various aspects including permanent injury/disability. At the same time, it cannot be construed that compensation cannot be granted for permanent disability of any nature. For example, take the case of a non-earning member of a family who has been injured in an accident and sustained permanent disability due to amputation of leg or hand, it cannot be construed that no amount needs to be granted for permanent disability. It cannot be disputed that apart from the fact that the permanent disability affects the earning capacity of the person concerned, undoubtedly, one has to forego other personal comforts and even for normal avocation they have to depend on others. In the case on hand, two doctors had explained the nature of injuries, treatment received and the disability suffered due to partial loss of eye-sight and amputation of middle finger in the right hand and we have already adverted

to the avocation, namely, at the time of accident, he was working as Foreman in M/s Armstrong Hydraulics Ltd. Taking note of his nature of work, partial loss in the eye sight, loss of middle finger of the right hand, it not only affects his earning capacity but also affects normal avocation and day-to-day work."

(ii) In Rajkumar v. Ajay Kumar reported in 2011 ACJ 1 (SC), at paragraphs 4 to 14, the Hon'ble Supreme Court with illustrations, explained as to how the extent of loss of earning capacity has to be assessed,

"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 terns 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 12 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. Now, the legal representatives of the deceased have pursued the claim. At the time of accident, the injured was aged 42 years, at the time of accident and had he been alive, he would have been granted compensation, under the heads, disability, loss of earning, mental agony, attendant charges and other factors, which we inclined to quantify, as follows:

Loss of income	: Rs.27,00,000/-
Disability	: Rs. 1,70,000/- (Rs.2,000/- per disability)
Pain and Suffering	: Rs. 1,50,000/-
Attendant charges	: Rs. 50,000/-
Loss of amenities	: Rs. 1,00,000/-
Medical expenses	: Rs. 6,000/-
Transportation	: Rs. 50,000/-
Total	: Rs.32,26,000/-

16. Now, the compensation is determined as Rs.32,26,000/-. There would be a reduction of Rs.9,65,000/-. It is represented that 50% of the award amount has already been deposited. Compensation shall be apportioned to the following legal representatives,

Wife	- Rs.10,00,000/-
Son	- Rs.10,00,000/-
Minor Daughter	- Rs.10,26,000/-

17. For the reasons, stated supra, this Civil Miscellaneous Appeal is partly allowed, with a direction to the appellant-Insurance Company to deposit the balance amount, with proportionate accrued interest and costs, less the amount already deposited. On such deposit, respondents/claimants, except the minor, are permitted to withdraw the same, by making necessary applications before the Tribunal. Minor' share shall be deposited in any Nationalised Bank in fixed deposit, under the reinvestment scheme initially for a period of three years, proximate to the residence of the 3rd respondent herein. The

interest accruing on the share of the minor shall be paid to the 3rd respondent/ guardian once in three months, till they attain majority. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

The Motor Accidents Claims Tribunal,
(Chief Judicial Magistrate),
Nagapattinam.

Copy to:

The Section Officer,
V.R.Section,
High Court,Madras.

+1cc to M/s.Sai Bharath & Ilan, Advocate, S.R.No.20799

C.M.A.No.25 of 2016

SAI(CO)
RS(23/06/2017)