

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. Nos.2095 OF 2010 AND 2767 OF 2014

COMMON JUDGMENT:

The former appeal is preferred by M/s. United India Insurance Company Limited, which is arrayed as respondent Nos.2 and 4 in O.P. No.102 of 2005 on the file of the Chairman, Motor Accident Claims Tribunal - cum - XVI Additional Chief Judge - cum - II Additional Metropolitan Sessions Judge, Hyderabad, (for short 'the Tribunal'), under Section 173 of the Motor Vehicles Act, 1988 (for short 'Act, 1988'), aggrieved over awarding compensation of Rs.9,98,900/-, by order, dated 16.02.2009, in the said O.P. as against the claim for Rs.30,00,000/- laid under Sections 166 and 163-A of the Act, 1988, on the ground that the amount granted was excessive, arbitrary and, in fact, there was contributory negligence on the driver of the Tempo Trax, in which the claimant was travelling, which the Tribunal did not properly appreciate.

2. Latter appeal is preferred by the claimant on the ground that just compensation was not awarded and he suffered injury to spinal cord which disabled him to move out of bed and he cannot even be in a position to do work, and the percentage of disability ought to have taken 100% as against 70% taken by the Tribunal and ought to have granted future prospects as the claimant sustained permanent disability in view of the law laid down by the Hon'ble Supreme Court.

3. The appellant in the former appeal is respondent Nos.2 and 4 in the latter appeal, while respondent No.1 is the appellant and respondent Nos.2 and 3 are respondent Nos.1 and 3.

4. The appellant in the former appeal is the insurer of Lorry bearing registration No.AP 29T 1707 and also Tempo Trax bearing registration No.AP 36V 9117 arrayed as respondent Nos.2 and 4 in O.P. No.102 of 2005 and respondent No.2 and 3, who are owners of the said vehicles, are respondent Nos.1 and 3, while respondent No.1 is the claimant.

5. For the sake of convenience, the parties hereinafter referred to as they were arrayed in the aforesaid O.P. before the Tribunal.

6. A few facts are necessary for adjudication of the controversy in both these appeals.

i) The claimant was aged 20 years on the date of accident and claimed that he was earning Rs.3,000/- per month as salary and Rs.20/- per day as Batta as a private employee in Madina Furniture at Peddapally of Karimnagar District.

ii) On 14.09.2004 at about 2.30 A.M., while he was proceeding in Tempo Trax bearing registration No.AP 36V 9117 belonging to respondent No.3 and insured with respondent No.4 from Uppal towards Jangaon, and when it reached Alair Bridge known as Alair

Peda Vagu, a lorry bearing registration No.AP 29T 1707 belonging to respondent No.1 and insured with respondent No.2 driven at high speed in a rash and negligent manner dashed the Tempo, due to which, the claimant sustained injuries to his head, fracture to his spinal cord and other multiple injuries. A crime was also registered against the driver of the lorry by Alair Police Station against the driver of the lorry for the offences under Sections 304-A, 337 and 338 IPC.

iii) According to him, he was shifted to Gandhi Hospital, where he underwent surgical intervention. After discharge, he got admitted in private hospital, and still, undergoing treatment. He incurred huge medical expenses even in Gandhi Hospital, though, a Government Hospital he had to purchase medicines.

iv) Fracture of spinal cord injury rendered him totally bed-ridden and not in a position to do any work since his movements were restricted, his legs and left hand are not functioning, and even cannot move to answer calls of nature without attendant and, thus, he incurred a sum of Rs.2,000/- per month towards attendant charges and sustained 100% loss of income and, therefore, he laid the claim for Rs.30,00,000/- towards compensation.

7. Respondent No.1, owner of the lorry, and respondent No.3, owner of the Tempo Trax, did not choose to contest the claim petition.

8. Respondent Nos.2 and 4 being one and the same insurance company, as both vehicles were involved in the accident, resisted the request by raising various grounds. According to it, the claim originally made was Rs.2,00,000/- and it was enhanced by way of amendment to Rs.30,00,000/-. They even filed additional counters.

i) According to it after completion of evidence, the claimant approached NIMS Hospital for follow-up treatment and the major treatment was at Gandhi Hospital, and he approached the NIMS Hospital only for supportive treatment and to create medical records for enhanced claim. Hence, sought to dismiss the claim petition.

9. The Tribunal, on the basis of pleadings, framed the following three issues for trial:

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1. Whether the accident took place on 14-09-2004 at about 2.30 a.m., due to rash and negligent driving of Lorry bearing No:AP 29T 1707, by its driver?
2. Whether the petitioner is entitled to claim compensation from the respondents? If so, to what amount and from whom?
3. To what relief? ”

10. During trial, the claimant examined himself as PW.1, besides examining the doctors as PWs.2, 5, 6 and 7 and his employer as PW.3 and attendant as PW.4, and exhibited Exs.A-1 to A-32. On behalf of Insurer, one G. Jagadishwar was examined as RW.1 and

marked Exs.B-1 to B-4. Case sheet relating to the claimant got marked as Ex.C.1.

11. On issue No.1, the Tribunal by an elaborate discussion, examined the evidence of PW.1, RW.1 and the certified copies of First Information Report, Charge Sheet and crime scene observation *panchanama* marked as Exs.A-1, A-2 and A-5 and held that the accident did take place on account of rash and negligent driving of the driver of the lorry belonging to respondent No.1 and insured with respondent No.2 and, accordingly, answered the issue.

12. On issue No.2, the Tribunal examined the evidence on record in awarding pecuniary damages and non-pecuniary damages. Towards pecuniary damages, the Tribunal awarded a total sum of Rs.3,70,500/- and towards Non-pecuniary damages, a total sum of Rs.6,28,400/- was awarded, thus, a total compensation of Rs.9,98,900/- was awarded with interest at 7.5% per annum with proportionate costs, mulcting liability on respondent Nos.1 and 2, while dismissing the claim petition against respondent Nos.3 and 4.

13. Aggrieved over the same, the former appeal is filed by the Insurer and the latter appeal is filed by the claimant.

14. What is important in the present case is, the evidence of Medical Officers examined as PWs.2, 5, 6 and 7. PW.2 - Dr. T. Prasad is the Head of Department of Orthopedics, Gandhi Hospital,

Secunderabad. His evidence shows that due to failure of neuro-system and loss of sensation in both lower limbs, the claimant can only move in a wheel chair. The evidence of PW.5 - Dr. Praveen, a Neuro Surgeon in NIMS Hospital, asserts that the claimant if used Baclofen Pump, would help in decrease of pains in legs, but, however, according to him, it would not improve walking power and that the said pump is required for lifelong and, of course, again he states that even without the said pump, they can reduce the pains. The cost of the Baclofen Pump was Rs.3,00,000/- and towards its maintenance, another Rs.3,00,000/- was claimed by the claimant. The same was also spoken to by PW.5. PW.6 - Dr.A.K. Purohit, is another Neuro Surgeon, who would state in his evidence that the claimant was suffering with Paraplegia and there is hardly any function in the legs and that the claimant also lost his urinary control as there is erectile dysfunction in the legs. PW.7 - Dr. Ch. Ram Reddy, Urologist, states that the claimant is suffering from stricture urethra Neurogenic Bladder and that they are life-long problems.

i) Keeping in view, the evidence of Medical officers and the documentary evidence relating to the treatment he had undergone in various hospitals and the salary certificate and the evidence of PW.2, the employer, the Tribunal arrived at, the age of the claimant as 23 years and his monthly income at Rs.3,000/-, and taken permanent disability at 70% and loss of future income was assessed by it at

Rs.2,100/- per month towards 70%, and applying multiplier '17', arrived at Rs.4,28,400/- [Rs.2,100/- p.m. x 12 months x 17 multiplier] under the head of loss of future earnings due to the said disability. The Tribunal also granted a sum of Rs.1,05,000/- towards medical expenses; Rs.30,000/- towards extra nourishment; Rs.2,00,000/- towards attendant charges; Rs.25,000/- towards conveyance/transportation charges and Rs.10,500/- towards loss of past earnings, making a total of Rs.3,70,500/- towards pecuniary damages. Towards non-pecuniary damages, awarded a sum of Rs.1,00,000/- towards pain and suffering; Rs.1,00,000/- towards loss of amenities in life including inconvenience, hardship, discomfort, disappointment, frustration and mental stress; and Rs.4,28,400/- towards loss of future earnings, making a total of Rs.6,28,900/-, thus, granted a total amount of Rs.9,98,900/- as compensation.

15. Heard Sri Somanchi Venkateswarlu, learned standing counsel for the appellant - Insurer in former appeal and respondent Nos.2 and 4 in latter appeal, and Sri Kasireddy Jagathpal Reddy, learned counsel for respondent No.1 - claimant in the former appeal, and appellant in the latter appeal.

16. In view of the submissions made by both sides, the following points would arise for determination:

- (i) Whether the claim petition itself is not maintainable in view of the fact that the claim was laid under both provisions i.e., Section 166 and 163-A of the Act, as pleaded by the Insurer?
- (ii) Whether there has been contributory negligence as pleaded by the Insurer?
- (iii) Whether the Tribunal was not right in taking disability at 70% and ought to have taken disability at 100%, as pleaded by the claimant?
- (iv) Whether the claimant is entitled to future prospects?
- (v) Whether the order and decree passed by the Tribunal warrant any interference?

POINT No.(i)

17. Learned standing counsel for the Insurer placed reliance in **Deepal Girishbhai Soni and others v. United Insurance Company Limited**¹. A three-Judge Bench of the Hon'ble Supreme Court held that remedy for payment of compensation both under Sections 163-A and 166 being final and independent of each other as statutorily provided, a claimant cannot pursue his remedies there-under simultaneously. It is also his submission that since present claim was laid under both the provisions, the Tribunal ought to have rejected by dismissing the claim petition and, therefore, he requests to set aside the order and decree passed by the Tribunal.

¹. AIR 2004 SC 2107

i) *Per contra*, the learned counsel for the claimant would submit that when the claim was laid, there was ambiguity and there was no finality as to whether the claim under Section 163-A would cover payment of interim compensation or whether it relates to award of final amount of compensation and not an interim one and, therefore, there was no fault on the part of the claimant in making a claim petition under both the provisions. The learned counsel has drawn the attention to the law declared by the Hon'ble Supreme Court in paragraph No.57 in **Deepal Girishbhai Soni**¹ thus:

“57. We, therefore, are of the opinion that remedy for payment of compensation both under Sections 163-A and 166 being final and independent of each other as statutorily provided, a claimant cannot pursue his remedies thereunder simultaneously. One, thus, must opt/elect to go either for a proceeding under Section 163-A or under Section 166 of the Act, but not under both.”

It is clear from the expression of the Hon'ble Supreme Court that the claimant ought to have either opted or elected to go either the proceedings under Section 163-A or under Section 166 of the Act, and since the claim petition was laid by the date of law laid down by the Hon'ble Apex Court in the aforesaid decision, the Tribunal ought to have asked the claimant either to opt or to elect proceedings either under Section 163-A or under Section 166 of the Act. However, since the Tribunal proceeded with determination of compensation under the provisions of Section 166 of the Act, the contentions raised by the learned standing counsel for the Insurer does not merit acceptance as

the very object of the legislation is to determine fair compensation. Therefore, on the said ground, the claim laid in the year 2003 when decided in 2008 year, certainly, cannot be rejected setting aside the order and decree passed by the Tribunal nor this Court can remit the claim on that ground setting aside the order and decree asking the claimant to elect to which of the provisions the claimant intended to invoke in seeking compensation. Therefore, rejecting the submission of the learned standing counsel for the Insurer, this point is held against the Insurer.

POINT No.(ii)

18. In regard to the submissions made by the learned standing counsel that the petitioner contributed to taking place of the accident, he again refers to the evidence of RW.1, employee from the local branch of Insurer. What all he asserts was that at the relevant time, the Tempo Trax was overloaded and on account of it, the driver could not control the speed and dashed against the crime vehicle and, therefore, the driver of the Tempo Trax contributed to the accident. This was negated by the Tribunal by discussing the evidence of RW.1, and the Tribunal though, held that the evidence points out that there was collision of both vehicles, but merely on account of that fact, it cannot be said that PW.1 was admitting that there was contributory negligence on the part of the drivers of both vehicles. In fact, this submission pales into insignificance for the reason that the

Insurer is one and the same for the Tempo Trax as well as the Lorry. Thus, both the vehicles, which were involved in the accident, were covered by the policies issued by the very same Insurer shown as respondent Nos.2 and 4 in the claim petition. Though, even if contributory negligence is taken into consideration, still, the Insurer cannot be exonerated from its liability with which the Tempo Trax was insured. Even otherwise, no sufficient evidence is placed on record to hold that the driver of Tempo Trax contributed to the accident. Further, the documentary evidence through Exs.A-1, A-2, A-3 and A-6, which are First Information Report, Charge Sheet, Accident Register and Motor Vehicle Inspector's Report would only support the stand of the claimant, but not the case of the Insurer, more particularly, the report of the Motor Vehicle Inspector assumes greater significance and, therefore, overlooking the report of the Motor Vehicles Inspector and the investigation done by the police, who laid the charge sheet against the driver of the lorry alone, it cannot be said that there was contributory negligence of the driver of the Tempo Trax. Hence, this point is also held against the Insurer.

POINT Nos.(iii) & (iv)

19. The Tribunal has taken into consideration 70% partial permanent disability having discussed the evidence of Medical Officers examined as PWs.2, 5, 6 and 7. The Tribunal found that the medical evidence would indicate total paraplegia of both lower limbs

with loss of sensation and the claimant was unable to move on his own and taken multiplier factor '17' and the income as Rs.3,000/- per month and thereby arrived at Rs.2,100/- per month towards 70% partial permanent disability. The Tribunal has assessed the evidence of Medical officers. PW.2 was the Head of Department of Orthopedics, Gandhi Hospital, Secunderabad. He was intended to speak to the permanent disability certificate issued under Ex.A-16 showing the percentage of disability as 70%. The reason for arriving at 70% partial permanent disability was on account of total paraplegia of both lower limbs with loss of sensation and loss of functional bladder and bowels, that the claimant can move only in wheel chair; that there was possibility of recurrence of ulcers and bed sores and recurrence of urinary infection resulting in deterioration of general health condition. This witness was cross-examined by the learned standing counsel. But, however, it appears that nothing favourable to the Insurer was elicited.

i) PW.5 is a Neurosurgeon working in NIMS Hospital, Hyderabad, who spoke about the follow-up treatment. Since paraplegia is associated with central nervous system, he is the best witness to speak about the neurological condition of the claimant and on account of damage to central nervous system, the claimant suffered paraplegia of both lower limbs and it was not partial but it was total even according to the evidence of PW.2.

ii) PW.6 is yet another Neurosurgeon, who also would assert that the claimant was suffering from paraplegia of both limbs, and further asserts that there was hardly any function in the legs and that the claimant has lost urinary control and there was erectile dysfunction in the legs.

iii) PW.7 is a Neurologist, whose evidence would show that the claimant was suffering with stricture urethra Neurogenic Bladder and they are lifelong problems.

iv) Thus, the evidence of Medical Officers would clearly indicate that the claimant being a young man, due to injury to spinal cord resulting in paraplegia in both lower limbs is unable to walk, move and also stand, run and sit or squat and could not perform sexual act and he has to move only in wheel chair with various problems including urinary infection and loss of urinary control, thus, the life of the claimant becoming miserable. These factors have been taken into consideration by the Tribunal and that that was the reason the Tribunal was constrained to award compensation under Special and General Damages by following the provisions of Section 166 of the Act, but, however, borrowing the multiplier factor provided under Second Schedule to Section 163-A of the Act. Thus, under the head of pecuniary damages, the Tribunal has awarded a sum of Rs.1,05,000/- towards medical expenditure; Rs.30,000/- towards extra nourishment; Rs.2,00,000/- towards attendant charges; Rs.25,000/-

towards conveyance/transportation charges; and Rs.10,500/- towards loss of past earnings, making a total of Rs.3,70,500/-. Under non-pecuniary damages, a sum of Rs.1,00,000/- towards pain and suffering; Rs.1,00,000/- towards loss of amenities in life including inconvenience, hardship, discomfort, disappointment, frustration and mental stress; and Rs.4,28,400/- towards loss of future earnings due to disability calculated on the structural formula taking the contribution of Rs.2,100/- per month applying multiplier factor '17' as the age of the claimant, on the date of the accident, was 23 years, thus, a total amount of Rs.9,98,900/- was awarded as compensation with interest at 7.5% per annum.

v) The submission of the learned counsel for the claimant has been that the condition of the claimant has become still worse and he also filed latest positive photographs in the context of making an application for early disposal of the case to the Registrar (Judicial). What has been now sought to be projected is already considered by the Tribunal, but the submission of the learned counsel is that the law declared by the Hon'ble Supreme Court in an alike situation where both limbs do not function on account of injury sustained by a person in an accident, percentage of disability ought to be considered at 100%. That has been the main submission made by the learned counsel. The other submission made by the learned counsel is that the claimant is entitled to future prospects on account of permanent

disability and to fortify his submission, he has relied on a catena of decisions rendered by the Hon'ble Apex Court, where it was held that even an injured is entitled to future prospects where he suffers permanent disability and becomes totally disabled.

a) In that direction, in **Syed Sadiq & others v. Divisional Manager, United India Insurance Company Limited**², the Hon'ble Apex Court having found that the claimant therein was vegetable vendor, aged about 24 years suffering 85% functional disability in motor accident, held that he was entitled to 50% increment in future prospects of income. It would be appropriate to refer to the expression of the Hon'ble Supreme Court in paragraph Nos.6, 7 and 10 thus:

“6. This Court in the case of [Mohan Soni v. Ram Avtar Tomar \[\(2012\) 2 SCC 267\]](#), has elaborately discussed upon the factors which determine the loss of income of the claimant more objectively. The relevant paragraph reads as under:

“11. In a more recent decision in [Raj Kumar v. Ajay Kumar and another](#), (2011) 1 SCC 343, this Court considered in great detail the correlation between the physical disability suffered in an accident and the loss of earning capacity resulting from it. In paragraphs 10, 11 and 13 of the judgment in Raj Kumar, this Court made the following observations:

‘10. Where the claimant suffers a permanent disability as a result of injuries, the assessment of compensation under

². (2014) 2 SCC 735

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, the 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 permanent 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 the 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 Company Ltd.](#) [(2010) 10 SCC 254] and [Yadava Kumar v. National Insurance Company Ltd.](#) [(2010) 10 SCC 341]).

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.”

7. Further, the appellant claims that he was working as a vegetable vendor. It is true that a vegetable vendor might not require mobility to the extent that he sells vegetables at one place. However, the occupation of vegetable vending is not confined to selling vegetables from a particular location. It rather involves procuring vegetables from the whole-sale market or the farmers and then selling it off in the retail market. This often involves selling vegetables in the cart which requires 100% mobility. But even by conservative approach, if we presume that the vegetable vending by the appellant/claimant involved selling vegetables from one place, the claimant would require assistance with his mobility in bringing vegetables to the market place which otherwise would be extremely difficult for him with an amputated leg. We are required to be sensitive while dealing with manual labour cases where

loss of limb is often equivalent to loss of livelihood. Yet, considering that the appellant/claimant is still capable to fend for his livelihood once he is brought in the market place, we determine the disability at 85% to determine the loss of income.

10. Further, it is evident from the material evidence on record that the appellant/claimant was 24 years old at the time of occurrence of the accident. It is also established on record that he was earning his livelihood by vending vegetables. The issue regarding calculation of prospective increment of income in the future of self employed people, came up in [Santosh Devi v. National Insurance Company Limited](#)[(2012) 6 SCC 42], wherein this Court has held as under:

“14. We find it extremely difficult to fathom any rationale for the observation made in paragraph 24 of the judgment in Sarla Verma's case that where the deceased was self-employed or was on a fixed salary without provision for annual increment, etc., the Courts will usually take only the actual income at the time of death and a departure from this rule should be made only in rare and exceptional cases involving special circumstances. In our view, it will be nave to say that the wages or total emoluments/income of a person who is self-employed or who is employed on a fixed salary without provision for annual increment, etc., would remain the same throughout his life.

15. The rise in the cost of living affects everyone across the board. It does not make any distinction between rich and poor. As a matter of fact, the effect of rise in prices which directly impacts the cost of living is minimal on the rich and maximum on those who are self-employed or who get fixed income/emoluments. They are the worst affected

people. Therefore, they put extra efforts to generate additional income necessary for sustaining their families.

16. The salaries of those employed under the Central and State Governments and their agencies/instrumentalities have been revised from time to time to provide a cushion against the rising prices and provisions have been made for providing security to the families of the deceased employees. The salaries of those employed in private sectors have also increased manifold. Till about two decades ago, nobody could have imagined that salary of Class IV employee of the Government would be in five figures and total emoluments of those in higher echelons of service will cross the figure of rupees one lac.

17. Although, the wages/income of those employed in unorganized sectors has not registered a corresponding increase and has not kept pace with the increase in the salaries of the Government employees and those employed in private sectors but it cannot be denied that there has been incremental enhancement in the income of those who are self-employed and even those engaged on daily basis, monthly basis or even seasonal basis. We can take judicial notice of the fact that with a view to meet the challenges posed by high cost of living, the persons falling in the latter category periodically increase the cost of their labour. In this context, it may be useful to give an example of a tailor who earns his livelihood by stitching cloths. If the cost of living increases and the prices of essentials go up, it is but natural for him to increase the cost of his labour. So will be the cases of ordinary skilled and unskilled labour, like, barber, blacksmith, cobbler, mason etc.

18. Therefore, we do not think that while making the observations in the last three lines of paragraph 24 of Sarla Verma's judgment, the Court had intended to lay down an

absolute rule that there will be no addition in the income of a person who is self-employed or who is paid fixed wages. Rather, it would be reasonable to say that a person who is self-employed or is engaged on fixed wages will also get 30 per cent increase in his total income over a period of time and if he / she becomes victim of accident then the same formula deserves to be applied for calculating the amount of compensation.”

Therefore, considering that the appellant/ claimant was self employed and was 24 years of age, we hold that he is entitled to 50% increment in the future prospect of income based upon the principle laid down in the Santosh Devi case (supra).”

Thus, it was a case where the functional disability was estimated at 85%, whereas the High Court determined the disability at 65% keeping in view the provisions of Section 4 of the Workmen’s Compensation Act, 1923, but the Hon’ble Apex Court holding that the occupation of the vegetable vending is not confined to selling vegetables from a particular location, but involves procuring vegetables from the whole-sale market or the farmers and then selling it off in the retail market, often involves selling vegetables in the cart which requires 100% mobility, declared the functional disability at 85%.

b) In **Rajan v. Soly Sebastian and others**³ where the injured was a driver by profession, aged 30 years, suffering with right side hemiplegia, the Tribunal opined that the injured therein suffered 60%

³. 2015 ACJ 2418

body disability and the Tribunal accepted it, but the High Court has taken disability at 100%, the Hon'ble Apex Court taking into consideration the minimum wages, assessed the income at Rs.3,500/- per month, allowed 50% towards future prospects and adopting multiplier '17' determined compensation towards loss of earning capacity.

c) In **Sanjay Verma v. Haryana Roadways**⁴, the Hon'ble Supreme Court considering that the Medical Board estimated 80% disability, and on re-examination by the very same doctor, who opined 100% disability since the condition of the injured though thinking of by Medical Board would improve and indeed deteriorated and taking into account the age of the claimant as 25 years and the fact that he had constant income being employed person, opined addition of 50% to the income the claimant was earning would be justified and, thus, applied the multiplier '17' as against '15' applied by the High Court wrongly and determined the compensation. So far as the future prospects are concerned, the Hon'ble Apex Court referred to the law laid down in **Santosh Devi v. National Insurance Company Limited and others**⁵ and **Rajesh and others v. Rajbir Singh and others**⁶ in granting addition of 50% to the actual income of the deceased while computing future prospects.

⁴. 2014 (2) An.W.R. 81 (SC)

⁵. (2013) 9 SCC 65

⁶. (2013) 9 SCC 54

d) In **V. Mekala v. M. Malathi & another**⁷, the victim was 16 years old and a brilliant student holding first rank in her school, suffered with 70% permanent disability in motor accident. Consequent to which, she is unable to walk without crutches and suffering from severe pain while walking. Keeping in view, that she was a brilliant student having good career prospects enhanced the notional monthly income of Rs.6,000/- fixed by the High Court to Rs.10,000/- on the ground that it was too meager and considered future prospects at 50% referring to the law declared in **Santosh Devi**⁵.

e) In **Sanjay Kumar Ashok Kumar and another**⁸, the Hon'ble Apex Court reiterated the basic principles for award of compensation distinguishing routine personal injury cases from serious cases and awarded future prospects.

vi) Therefore, to the extent of granting future prospects, certainly, there is merit in the submission made by the learned counsel for the claimant and when kept in view, the case at hand, it is a serious injury case, as the claimant suffered loss of total sensation and paraplegia of both lower limbs. In fact, the latest positive photographs also would show that physiotherapist attending the claimant, though it is more than ten years period that has passed from the date of the claimant sustaining injuries.

⁷. (2014) 11 SCC 178

⁸. (2014) 5 SCC 330

vii) Further question that arises for consideration is what would be the addition that should be towards future prospects. The law is well-settled now in view of the decision of the Hon'ble Constitutional Bench in **National Insurance Company Limited v. Pranay Sethi and others**⁹. The Constitutional Bench of the Hon'ble Apex Court held that where the deceased had a permanent job and was below the age of 40 years, the addition should be 50%; if the age of the deceased was between 40-50 years, the addition should be 30% and in case the deceased was between 50-60 years, the addition should be 15%, and the actual salary should be read as actual salary less tax. So far as the self-employed/fixed salary cases are concerned, the Constitutional Bench held that the addition of 40% of the established income should be warrant, where the deceased was below 40 years, and the addition of 25% where the deceased was between the age of 40 to 50 years; and 10% where the deceased was between the age of 50-60 years.

a) The expression of the Hon'ble Supreme Court in paragraph No.61 runs thus:

“61. In view of the aforesaid analysis, we proceed to record our conclusions:-

(i) The two-Judge Bench in Santosh Devi should have been well advised to refer the matter to a larger Bench as it was taking a different view than what has been stated in Sarla Verma, a judgment by a coordinate Bench. It is because a coordinate Bench

⁹. 2017 (13) SCALE 12

of the same strength cannot take a contrary view than what has been held by another coordinate Bench.

(ii) As Rajesh has not taken note of the decision in Reshma Kumari, which was delivered at earlier point of time, the decision in Rajesh is not a binding precedent.

(iii) While determining the income, an addition of 50% of actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made. The addition should be 30%, if the age of the deceased was between 40 to 50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less tax.

(iv) In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component.

(v) For determination of the multiplicand, the deduction for personal and living expenses, the tribunals and the courts shall be guided by paragraphs 30 to 32 of Sarla Verma which we have reproduced hereinbefore.

(vi) The selection of multiplier shall be as indicated in the Table in Sarla Verma read with paragraph 42 of that judgment.

(vii) The age of the deceased should be the basis for applying the multiplier.

(viii) Reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs. 15,000/-, Rs. 40,000/- and Rs. 15,000/- respectively. The aforesaid amounts should be enhanced at the rate of 10% in every three years.”

viii) In the present case, the claimant falls in the second category. He is not a permanent employee on salary. He is self-

employed and, therefore, he is entitled to 40% of the income as he was aged 23 years on the date of accident towards future prospects.

a) Adverting to the first question as to the percentage of disability, as already mentioned, the Tribunal has taken 70% basing on the evidence of PW.1 and Ex.A-16 contents. It is abundantly clear from the evidence on record that both lower limbs of the claimant affected resulting in total paraplegia which gives an indication that he cannot move at all from the bed and has to confine to the wheel-chair with the assistance of someone, who can shift him from cot to wheel. When there has been no improvement at all, as could be seen from the positive photographs filed by the claimant as mentioned herein before, where physiotherapist is constantly required to be engaged, certainly, the percentage of disability ought to be 100% as held in **Sanjay Verma⁴** and, therefore, the case at hand is a desirable case, where permanent disability has to be assessed at 100% but not at 70%. When the monthly income of Rs.3,000/- is taken as held by the Tribunal, which is based on the evidence of PW.3, the annual income would work out to Rs.36,000/-, and the multiplier factor '18' is applicable as provided in the table formulated by the Hon'ble Supreme Court in **Sarla Verma v. Delhi Transport Corporation¹⁰** and even reiterated by the Hon'ble Supreme Court in **Pranay Sethi⁹**, and when applied, the loss of future earning capacity would be Rs.6,48,000/-. In addition to the same, the claimant is also entitled to

¹⁰. 2009 ACJ 1298

40% increment towards future prospects, which would be Rs.2,59,200/- and, accordingly, the same is granted.

b) The learned counsel, no doubt, contended that the evidence of PW.5 during examination-in-chief would prove that using of Baclofen Pump, would help him in reducing the pain which costs around Rs.3,00,000/- and another sum of Rs.3,00,000/- towards maintenance and, therefore, requests to grant the same. The Tribunal basing on the evidence of PW.5 that it is not essential and even without the same, by medication pains can be reduced, as such, the claimant is not entitled to Rs.6,00,000/- towards Baclofen Pump and its maintenance. The Tribunal granted Rs.1,05,000/- towards medical expenditure, the same is confirmed. The Tribunal granted a sum of Rs.30,000/- towards extra nourishment. The same is also confirmed for the reason that no separate amount is claimed under the head of extra nourishment by the claimant. Towards attendant charges, a sum of Rs.2,00,000/- was granted by the Tribunal as against Rs.7,00,000/- claimed by the Tribunal. When the claimant has been engaging physiotherapist, besides an attendant, certainly, he is entitled to more than what was granted by the Tribunal in the year 2009. Therefore, it would be reasonable to enhance the same to Rs.5,00,000/- from Rs.2,00,000/- and, accordingly, the same is enhanced. An amount of Rs.25,000/- was awarded towards transportation/conveyance by the Tribunal. But, keeping in view, the injuries sustained by the claimant

and still suffering from loss of urinary control, he would be attending to the doctors for follow-up action and, therefore, a sum of Rs.1,00,000/- claimed by the claimant is granted. Towards loss of past earnings, a sum of Rs.10,500/- was awarded by the Tribunal, the same is confirmed. Towards pain and suffering, a sum of Rs.1,00,000/- was granted by the Tribunal and the same is also confirmed. Towards loss of amenities in life, a sum of Rs.1,00,000/- was awarded. The same is confirmed as no separate amount is claimed under separate head. Thus, the amount towards loss of future earnings granted by the Tribunal at Rs.4,28,400/- is enhanced to Rs.9,07,200/- [Rs.6,48,000/- plus 40% i.e., Rs.2,59,200]. The claimant is also entitled to Rs.5,000/- towards water bed charges for the reason the claimant is confined to bed and chance of suffering with bed source cannot be ruled out. The water bed would arrest spreading of bed source. The claimant also sought Rs.70,000/- towards cost of wheel chair, which the Tribunal declined to grant. But, keeping in view, the injuries sustained by the claimant, a sum of Rs.10,000/- is awarded towards cost of the wheel chair. Thus, in all, the claimant is entitled to Rs.18,67,700/- as compensation

Point No.(v)

20. In view of the findings recorded on point Nos.(i) to (iv), the MACMA No.2095 of 2010 filed by the Insurer is dismissed and MACMA No.2767 of 2014 filed by the claimant is allowed in part awarding the aforesaid compensation. The rate of interest awarded by

the Tribunal at 7.5% per annum is reasonable and, accordingly, the same is confirmed awarding the same rate on enhanced compensation.

No order as to costs.

As a sequel thereto, miscellaneous applications, if any, pending in the appeals, stand disposed of.

A. SHANKAR NARAYANA, J

April 09, 2018.

Mgr

