

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A. No.660 OF 2011

JUDGMENT:

This appeal is filed by the appellant-claimant aggrieved by the Award and Decree dated 20.12.2010 passed in O.P.No.697 of 2008 by the Motor Vehicle Accidents Claims Tribunal-cum-District Judge at Karimnagar (for short, the Tribunal).

2. The brief facts of the case are that on 12/13-8-2007 at 12.30 midnight, while the appellant was driving TATA Sumo bearing No.AP16 4830 from Mancherla to Hyderabad to bring computer systems, and when the TATA Sumo reached near the outskirts of Ponnala Village on Rajiv Rahadari Road, a lorry bearing No.AP29U 7477 came in a rash and negligent manner and dashed the vehicle of the appellant. In the said accident, the appellant sustained crush injury to his right hand and multiple injuries all over the body. He filed aforesaid OP against respondents Nos.1 to 3, driver, owner and insurer of aforesaid lorry, claiming compensation of Rs.10,00,000/- for the injuries sustained by him.

3. Before the Tribunal, respondent Nos.1 and 2 remained *ex parte*. Respondent No.3 filed counter denying the averments of the claim petition and contended that the amount claimed is excessive and prayed to dismiss the claim petition.

4. After considering the oral and documentary evidence on record, the Tribunal came to the conclusion that the accident occurred due to the rash and negligent driving of the driver of the

lorry and awarded total compensation of Rs.3,63,224/- i.e., Rs.10,000/- towards pain and suffering, Rs.41,224/- towards expenditure on treatment and medicines, Rs.3,06,000/- towards partial permanent disability, Rs.3,000/- towards extra nourishment and Rs.3,000/- towards transportation, with interest @ 7.5% per annum. Dissatisfied with the quantum of compensation, the appellant filed the present appeal, seeking enhancement of the same.

5. Sri Ram Chander Rao Vemuganti, learned counsel for the appellant, submits that though the appellant produced the evidence to show that he was earning Rs.10,000/- per month as a driver, the Tribunal erroneously fixed the income of the appellant at Rs.6,000/- per month, which is meager. He further submits that in the accident, the appellant sustained severe crush injury to his right hand and other grievous injuries, for which, he underwent surgery, skin grafting and plastic surgery and physiotherapy treatment, but there is no change in the movement in his right hand and his right hand has lost sensation and became feeble. Due to the said disability, the appellant cannot perform his duties of a driver in future and hence, his disability can be considered at 100%. Basing on the said submissions, the learned counsel seeks to enhance the compensation amount.

6. First I will deal with the aspect of functional disability suffered by the appellant. P.W.2, the doctor who treated the appellant at NIMS, Hyderabad, deposed that '*appellant has*

disability in his hand and arm components; that he has a fixed flexion deformity in the elbow approximately 80 degrees; that he has only approximately 15 to 20 degrees of forearm range of motion, where the normal range of motion in an elbow is 1 to 130 degrees; and that he has grip strength of grade third, wrist extension of grade third grade 2 power in elbow extension grade 3 power in flexion, all amounting to total disability of right upper limb to 50%'. He issued Ex.A.5 disability certificate showing that the appellant suffered 50% disability, but however, the Tribunal fixed the functional disability at 25%.

7. To decide the correctness of fixing the functional disability at 25% by the Tribunal, it is necessary to refer to the judgment of the Apex Court in **Raj Kumar V. Ajay Kumar**¹, wherein the Apex Court summarized the principles with regard to assessment of the effect of permanent disability on the actual earning capacity and it reads 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

¹ (2011) 1 SCC 343

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 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.

12. 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.

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.

14. 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."

8. From the above, it is clear that 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. In the present case, the claimant was working as a driver and in the accident, he suffered 50% disability to his right hand only, but not to his whole body. In the circumstances, the Tribunal fixed the functional disability of the appellant at 25% and accordingly granted compensation.

Hence, I see no ground to interfere with the finding of the Tribunal in that regard and the contention of the learned counsel for the appellant is rejected.

9. Coming to the other heads, the Tribunal has granted Rs.10,000/- towards pain and suffering, Rs.41,224/- towards expenditure on treatment and medicines, Rs.3,000/- towards extra nourishment and Rs.3,000/- towards transportation, which are reasonable and need no interference.

10. In the facts and circumstances of the case, this Court is of the opinion that the Tribunal has dealt with all the issues in detail and passed a well reasoned order and there are no grounds to interfere with the same. Hence, the appeal is liable to be dismissed.

11. In the result, the Motor Accident Civil Miscellaneous Appeal is dismissed. Miscellaneous petitions pending, if any, shall stand closed. No costs.

T.AMARNATH GOUD, J

Date: 30.12.2019
TJMR