

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A. No.659 OF 2011

JUDGMENT:

This appeal is filed by the appellant-claimant aggrieved by the Order and Decree dated 03.04.2008 passed in M.V.O.P.No.100 of 2003 by the Accidents Claims Tribunal-cum-I Additional Chief Judge, City Civil Court, Secunderabad (for short, the Tribunal).

2. The brief facts of the case are that on 28/29.12.2002 at about 2.00 am midnight, while the appellant was proceeding in DCM van bearing No.AP10T 7343 from Inderpriyal village along with the vegetables to sell the same in Monda Market, Secunderabad, and when it reached the outskirts of Kallakal Village, a lorry bearing No.AP16X 7576 came in a rash and negligent manner with high speed and dashed the DCM Van from backside. In the said accident, the appellant sustained grievous injuries all over the body. He filed aforesaid MVOP against respondents Nos.1 to 2, owner and insurer of aforesaid lorry, claiming compensation of Rs.1,00,000/- for the injuries sustained by him.

3. Before the Tribunal, respondent No.1 remained *ex parte*. Respondent No.2 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.48,585/- under various heads 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 E.Venu Gopal Reddy, learned counsel for the appellant, submits that though the appellant filed Ex.A.8, disability certificate, showing that the appellant suffered 30% disability, the Tribunal did not take the same into consideration and did not award any amount under that head. He further submits that in the accident, the appellant sustained severe injuries, for which, he underwent surgery and five holes DC plate was inserted to the radius and also nailing was done to the ulna for the ulna and radius bones of the right forearm. Due to the said disability, the appellant is not able to lift any weight with right hand and he has lost grip, due to which, he cannot do his work of vegetable vending in future and hence, his functional disability can be considered at 100% and he seeks to enhance the compensation amount. In support of his argument, he relied on the judgment of the Apex Court in **Raj Kumar V. Ajay Kumar**¹.

6. Ms.Neha, counsel appearing for Sri Muddu Vijay, learned counsel for respondent No.2, submits that the Tribunal passed a well reasoned order by taking into consideration all the aspects and seeks to dismiss the appeal.

¹ (2011) 1 SCC 343

7. In **Raj Kumar**'s case (supra), 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 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 find 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, P.W.3, the doctor who treated the appellant, deposed that for the fractures sustained by the appellant, he was operated on 3.1.2003 and that the appellant is unable to attend his normal work due to the injuries, but he did not issue any disability certificate. However, the appellant filed Ex.A.8, disability certificate, which was issued by P.W.2, who never treated the appellant. Pointing out the same, the Tribunal declined to accept the disability certificate and dismissed the claim of the appellant in that regard, which is just and proper. 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.40,000/- towards pain and suffering, Rs.585/- towards medical expenses, Rs.3,000/- towards special diet and extra nourishment and Rs.5,000/- towards loss of earnings, 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: 02.01.2020
TJMR

