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RAMACHANDRAPPA

v.

THE MANAGER, ROYAL SUNDARAM ALLIANCE
INSURANCE COMPANY LIMITED
(Civil Appeal No 6481 of 2011)

B

AUGUST 9, 2011

[G. S. SINGHVI AND H.L. DATTU, JJ.]

MOTOR VEHICLES ACT, 1988:

C

s. 166 – Motor accident – Permanent disability – Suitable compensation – Expression ‘disability’ – Connotation of – Claimant, a coolie, aged about 35 years, suffered grievous injuries – Permanent physical disability of right upper limb – Tribunal awarded total compensation of Rs. 1,13,900/- – High Court enhanced the compensation to Rs. 1,33,900/- – Held: Compensation to be awarded is not measured by the nature, location or degree of the injury, but rather by the extent or degree of the incapacity resulting from the injury – Tribunals are expected to make an award determining the amount of compensation which should appear to be just, fair and proper – In the instant case, the claim of claimant that his annual income was Rs.4500/- is honest and bona fide – The doctor assessed permanent physical disability at 41% and stated that the claimant cannot do any manual work as a coolie – Taking into consideration the future economic loss, the claimant would suffer because of permanent partial disability, the medical expenses incurred, pain and sufferings, loss of income during treatment, period of loss of future amenities and discomfort, interest of justice will be served if an additional amount of Rs.2,00,000/- is granted to the appellant by way of compensation – Insurance company directed to deposit before the Tribunal the enhanced compensation amount together with interest from the date of petition till the date of deposit.

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The appellant, who was aged about 35 years and was working as a coolie, met with a motor accident and was grievously injured. He filed a petition stating that his right hand was completely disabled and he was unable to do the work of coolie; and claimed a compensation of Rs. 5,50,000/-. In support of his claim, he examined the doctor (PW 2), who deposed that the appellant could not work as a coolie by using his right hand and could not do any other manual work. The Tribunal awarded a total compensation of Rs. 1,13,900/-. On appeal, the High Court enhanced the compensation to Rs. 1,33,900/-.

Partly allowing the appeal filed by the claimant, the Court

HELD: 1.1 The compensation is usually based upon the loss of the claimant's earnings or earning capacity, or upon the loss of particular faculties or members or use of such members, ordinarily in accordance with a definite schedule. The courts have time and again observed that the compensation to be awarded is not measured by the nature, location or degree of the injury, but rather by the extent or degree of the incapacity resulting from the injury. The Tribunals are expected to make an award determining the amount of compensation which should appear to be just, fair and proper. [para 8] [928-E-F]

1.2 The term "disability", as so used, ordinarily means loss or impairment of earning power and has been held not to mean loss of a member of the body. If the physical efficiency because of the injury has substantially impaired or if the claimant is unable to perform the same work with the same ease as before he was injured or is unable to do heavy work which he was able to do previous to his injury, he will be entitled to suitable compensation. Disability benefits are ordinarily graded on the basis of the character of the disability as partial or total, and as temporary or permanent. No definite rule can

A be established as to what constitutes partial incapacity in cases not covered by a schedule or fixed liabilities, since facts will differ in practically every case. [para 9] [928-G-H; 929-A-B]

B *Ramesh Chandra Vs. Randhir Singh* 1990 (3) SCR 1 = (1990) 3 SCC 723; *K.G. Poovaiah (Dr) v. G.M./Managing Director, Karnataka KSRTC*, (2001) 9 SCC 167; *Kapil Kumar v. Kudrat Ali*, (2002) 4 SCC 337, *Raj Kumar v. Ajay Kumar*, 2010 (13) SCR 179 = (2011) 1 SCC 343 – relied on.

C 1.3 In the instant case, it is not in dispute that the appellant was aged about 35 years and was working as a coolie and was earning Rs.4500/- per month at the time of accident. This claim is reduced by the Tribunal to a sum of Rs.3000/- only on the assumption that wages of the labourer during the relevant period viz. in the year 2004, were Rs.100/- per day. This assumption has no basis. Before the Tribunal, though Insurance Company was served, it did not choose to appear nor did it repudiate the claim. Therefore, there was no reason for the Tribunal to have reduced and determined the monthly earning a sum of Rs.3000/- per month. Further, the appellant was working as a coolie and, therefore, the court cannot expect him to produce any documentary evidence to substantiate his claim. In the absence of any other evidence contrary to the claim made by the claimant, in the facts of the case, the Tribunal should have accepted the same. However, in all cases and in all circumstances, the Tribunal need not accept the claim of the claimant in the absence of supporting material. It depends on the facts of each case. In the instant case, the claim was honest and bonafide and, therefore, there was no reason for the Tribunal to have reduced the monthly earning of the appellant from Rs.4500/- to Rs.3000/- per month. This Court therefore, accepts his statement that his monthly earning was Rs.4500/-. [para 14] [933-A-G]

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1.4 The appellant, in so far as disability caused due to accident is concerned, has stated in his evidence that he sustained severe bodily injuries which has resulted in permanent partial disability, which would affect his future earning capacity as a coolie. The Doctor (PW-2) has stated that the appellant has suffered permanent physical disability of 41% to right upper limb and in view of the disability, the claimant cannot work as a coolie and cannot do any other manual work as a coolie. This part of the evidence is not controverted by the insurance company by subjecting the claimant to cross-examination. Therefore, it can safely be concluded that the claimant has become permanently disabled and, therefore, has lost the future earning capacity permanently. The Tribunal, while assessing the loss of income has taken the disability to the whole body as 1/3rd of particular limb and has assessed the loss of income, at 1/3rd of 41% which comes to about 13.5% (so the loss of income taken at 13.5% of Rs.3000/-) and has quantified the loss of future income at Rs.72,900/-. This quantification arrived at by the Tribunal cannot be accepted since the assessment of compensation under the head of loss of earning capacity is calculated abysmally on the lower side. Besides, the claimant has also suffered prolonged medical treatment and hospitalization. [para 15] [933-H; 934-A-F]

1.5 Looking to the amount awarded by the Tribunal, this Court is of the view that the compensation awarded is too less. Taking into consideration the future economic loss, the claimant would suffer because of permanent partial disability, which would not permit him to work as a coolie or any other job, the medical expenses incurred, pain and sufferings, loss of income during treatment, period of loss of future amenities and discomfort, interest of justice will be served if an additional amount of Rs.2,00,000/- is granted to the appellant by way of

A compensation. The respondent-Insurance company is directed to deposit before the Tribunal the enhanced compensation amount together with interest from the date of petition till the date of deposit. [para 15-16] [934-F-H; 935-A-B]

B Case Law Reference:

1990 (3) SCR 1 relied on para 10

(2001) 9 SCC 167 relied on para 11

C (2002) 4 SCC 337 relied on para 12

2010 (13) SCR 179 relied on para 13

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6481 of 2011.

D From the Judgment and Order dated 09.12.2009 of the High Court of Karnataka at Bangalore in MFA No. 10869 of 2006.

E V.N. Raghupathy for the Appellant.

G. Balaji and Mahalakshmi Pavani (for Mahalakshmi Balaji & Co.) for the Respondent.

The Judgment of the Court was delivered by

F H.L. DATTU, J. 1. Leave granted.

G 2. This appeal is directed against the Judgment and Decree passed by the High Court of Karnataka in MFA No. 10869 of 2006 dated 9th day of December, 2009, whereby the High Court has partly allowed the appeal and enhanced the compensation awarded by the Court of Small Causes, Bangalore ('Tribunal' for short) in MVC Case No. 5124 of 2004 dated 25.03.2006. The Tribunal has awarded a sum of Rs.1,13,900/- with interest at 6% p.a. from the date of the claim
H petition till the date of deposit as against the claim of the

appellant for Rs.5,50,000/-. The High Court, by its impugned Judgment and order, has marginally increased the compensation awarded by the Tribunal. The appellant, being aggrieved by the compensation awarded by the Tribunal and the High Court, has filed this appeal. A

3. The facts of the present case are as follows :- B

The appellant was working as a Coolie and earning Rs. 4500/- per month. He was riding as pillion on a motorcycle with one Hanumanthappa, when they met with an accident. Appellant sustained grievous injuries. He was treated in a private nursing home and his treatment continued for a long time. In the claim petition, it was his case and claim that even after treatment, his right hand is completely disabled and due to which, his work and livelihood completely suffered. Appellant filed an application under Section 166 of Motor Vehicles Act, 1988 for compensation of Rs.5,50,000/- by way of special and general damages on account of injuries, pain, mental agony, loss of earning, physical disabilities, shortening of expectation of life due to injuries sustained in the accident and medical expenses incurred thereon. Hanumanthappa, who was Respondent No. 1 in the Claim Petition, though served with the notice of petition, did not appear before the Court to oppose the relief sought in the claim petition. The Tribunal, after considering the evidence on record, has awarded a compensation of Rs.1,13,900/- with interest at 6% per annum from the date of petition till the date of deposit as against the claim of the appellant for Rs.5,50,000/ C D E F

4. Aggrieved by the inadequate compensation awarded, the appellant preferred an appeal before the High Court of Karnataka. The court, by its order dated 9th of December, 2009, has awarded the compensation of Rs.1,33,900/-, as against Rs.1,13,900/- awarded by the Tribunal, with interest at 6% per annum on the enhanced compensation from the date of the petition till the date of realization. The appellant, being dissatisfied with the compensation awarded, is before us in this G H

A appeal.

5. We have heard the learned counsel for the parties to the lis and perused the records.

B 6. Before the Tribunal, the appellant had examined himself (PW-1) and one Dr. P.K.Raju, Asst. Professor in Orthopaedics (PW-2) in support of his claim petition. The Doctor, in his evidence, has stated that the appellant cannot work as a coolie by using his right hand and cannot do any other manual work. Though, he was cross-examined, nothing adverse to the claim C of the appellant is elicited.

D 7. The learned counsel for the appellant submits that due to the injuries sustained by the appellant in the accident, the appellant is permanently disabled, which would affect his future earning capacity as a Coolie. Per contra, learned counsel for the Insurance Company submits that since the appellant has suffered only 41% of disability, the High Court was justified in restricting the claim against the claim made by the appellant.

E 8. The compensation is usually based upon the loss of the claimant's earnings or earning capacity, or upon the loss of particular faculties or members or use of such members, ordinarily in accordance with a definite schedule. The Courts have time and again observed that the compensation to be awarded is not measured by the nature, location or degree of F the injury, but rather by the extent or degree of the incapacity resulting from the injury. The Tribunals are expected to make an award determining the amount of compensation which should appear to be just, fair and proper.

G 9. The term "disability", as so used, ordinarily means loss or impairment of earning power and has been held not to mean loss of a member of the body. If the physical efficiency because of the injury has substantially impaired or if he is unable to perform the same work with the same ease as before he was H injured or is unable to do heavy work which he was able to do

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previous to his injury, he will be entitled to suitable compensation. Disability benefits are ordinarily graded on the basis of the character of the disability as partial or total, and as temporary or permanent. No definite rule can be established as to what constitutes partial incapacity in cases not covered by a schedule or fixed liabilities, since facts will differ in practically every case.

10. In *Ramesh Chandra Vs. Randhir Singh* (1990) 3 SCC 723, this Court drawing distinction between the compensation for future loss and pain and enjoyment of life, has observed as under :

“... The incapacity or disability to earn a livelihood would have to be viewed not only in presenti but in futuro on reasonable expectancies and taking into account deprivation of earnings of a conceivable period. This head being totally different cannot in our view overlap the grant of compensation under the head of pain, suffering and loss of enjoyment of life. One head relates to the impairment of person's capacity to earn, the other relates to the pain and suffering and loss of enjoyment of life by the person himself.”

11. In *K.G. Poovaiah (Dr) v. G.M./Managing Director, Karnataka KSRTC*, (2001) 9 SCC 167, the appellant was a Medical Practitioner and was aged about 36 years and had met with an accident in which his hand was crushed. This Court, while considering the nature of his profession and income, has enhanced the amount of compensation for loss of future earnings. This Court observed :

“*There is no reason to doubt the testimony of the appellant so far as his monthly income is concerned. Being a medical man aged about 36 years on the date of the accident, the monthly salary received by him cannot be said to be exaggerated. He has candidly admitted that he was not assessed to tax. A salary of Rs*

A 3000 per month to a medical practitioner cannot be said
 to be on the higher side. We, therefore, accept his
 statement in this behalf. We also accept the assessment
 at Rs 40,000 for pain and suffering. However, the
 B assessment of compensation under the head of loss of
 earning capacity is very much on the lower side. The
 injury to the right hand, which has left a permanent
 disability and which has affected the functioning of the
 limb and in particular the fingers, is a serious handicap
 C to a medical practitioner. Patients would be reluctant to
 go to him for treatment and, therefore, the loss of earning
 capacity would be substantial. Even if we were to assume
 that it would reduce his earning capacity by 50% and
 even if we go by his earnings at the date of the accident,
 D the monthly loss would come to Rs 1500 i.e. Rs 18,000
 per annum. If this monthly loss of earning is multiplied
 by 10 years purchase factor the compensation would
 work out to Rs 1,80,000. To that must be added the
 compensation allowed under certain other heads,
 E namely, pain and suffering, loss of amenities, medical
 expenses, etc. The total amount comes to Rs 2,38,000."

12. In *Kapil Kumar v. Kudrat Ali*, (2002) 4 SCC 337, a
 student suffered injuries on his hand and the disability of 20%
 was assessed by the Doctors. This Court, while upholding the
 High Court's observation in relation to compensation for loss
 F of future earnings, has held:

"However, the disability sustained was assessed at 20 per
 cent. As rightly observed by the High Court, the loss of
 earning capacity on account of permanent partial disability
 G suffered by the appellant cannot be calculated in terms of
 percentage only. It will have serious repercussions on his
 studies and prospects of earning. He will have to face other
 handicaps in life. Though the High Court did realise the
 need to enhance the compensation, we feel that the extent
 H of enhancement is still inadequate. The increase of Rs

5000 is only marginal. Taking inter alia the table in the Second Schedule as the guiding factor, we are of the view that the compensation on account of disability incurred by the appellant should be enhanced by Rs 20,000 more; that means, he will get Rs 40,000 instead of Rs 20,000 awarded by the High Court under the first head.”

13. In *Raj Kumar v. Ajay Kumar*, (2011) 1 SCC 343, this Court, while considering the award of compensation to the victim of motor accident for loss of future earning due to some permanent physical disability, has observed :

“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, 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.

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

A 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
B 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*
C *Co. Ltd.*⁴ and *Yadava Kumar v. National Insurance Co.*
*Ltd.*⁵)

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
D 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;

E (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
F 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
G 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.”

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14. In the instant case, it is not in dispute that the appellant was aged about 35 years and was working as a Coolie and was earning Rs.4500/- per month at the time of accident. This claim is reduced by the Tribunal to a sum of Rs. 3000/- only on the assumption that wages of the labourer during the relevant period viz. in the year 2004, was Rs. 100/- per day. This assumption in our view has no basis. Before the Tribunal, though Insurance Company was served, it did not choose to appear before the Court nor did it repudiated the claim of the claimant. Therefore, there was no reason for the Tribunal to have reduced the claim of the claimant and determined the monthly earning a sum of Rs.3000/- per month. Secondly, the appellant was working as a Coolie and therefore, we cannot expect him to produce any documentary evidence to substantiate his claim. In the absence of any other evidence contrary to the claim made by the claimant, in our view, in the facts of the present case, the Tribunal should have accepted the claim of the claimant. We hasten to add that in all cases and in all circumstances, the Tribunal need not accept the claim of the claimant in the absence of supporting material. It depends on the facts of each case. In a given case, if the claim made is so exorbitant or if the claim made is contrary to ground realities, the Tribunal may not accept the claim and may proceed to determine the possible income by resorting to some guess work, which may include the ground realities prevailing at the relevant point of time. In the present case, appellant was working as a Coolie and in and around the date of the accident, the wage of the labourer was between Rs.100/- to 150/- per day or Rs.4500/- per month. In our view, the claim was honest and bonafide and, therefore, there was no reason for the Tribunal to have reduced the monthly earning of the appellant from Rs.4500/- to Rs.3000/- per month. We, therefore, accept his statement that his monthly earning was Rs.4500/-.

15. The appellant, in so far as disability caused due to accident is concerned, had stated in his evidence that he had

A sustained severe bodily injuries which has resulted in permanent partial disability, which would affect his future earning capacity as a Coolie. The Doctor, who was examined as claimant's witness, has stated that the appellant has sustained malunited fracture 2nd, 3rd, 4th, 5th MCB right and
B malunited fracture scapula right and in his opinion, the appellant has suffered permanent physical disability of 41% to right upper limb and in view of the disability, the claimant cannot work as a Coolie and cannot do any other manual work as a Coolie. The Tribunal, while assessing the loss of income has taken the
C disability to the whole body as 1/3rd of particular limb and has assessed the loss of income, at 1/3rd of 41% which comes to about 13.5%. So the loss of income taken at 13.5% of Rs.3000/- and has quantified the loss of future income at Rs.72,900/-. We cannot accept this quantification arrived at by
D the Tribunal, since the assessment of compensation under the head of loss of earning capacity is calculated abysmally on the lower side. On the question of disability caused due to the accident, the Doctor, who has been examined as claimant's witness, says that because of the injury sustained by the
E claimant, he cannot work as a Coolie and cannot do any other manual work. This part of the evidence is not controverted by the insurance company by subjecting the claimant to cross-examination. Therefore, we can safely conclude that claimant has become permanently disabled and, therefore, has lost the future earning capacity permanently. The claimant has also
F suffered prolonged medical treatment and hospitalization. Looking to the amount awarded by the Tribunal, we are of the view that the same is too less and, therefore, we are inclined to enhance the same. Taking into consideration the future economic loss, he would suffer because of permanent partial
G disability, which would not permit him to work as a Coolie or any other job, the medical expenses incurred, pain and sufferings, loss of income during treatment, period of loss of future amenities and discomfort, in our view, interest of justice will be served if an additional amount of Rs.2,00,000/- (Rupees

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Two Lakhs) is granted to the appellants by way of compensation. A

16. The respondent-Insurance company is directed to deposit the enhanced compensation amount together with interest from the date of petition till the date of deposit before the Tribunal within a period of eight weeks from today. The enhanced compensation amount with interest shall be paid to the claimant on such deposit. B

17. The appeal is allowed to the extent indicated above. Costs are made easy. C

R.P.

Appeal partly allowed.