

S. MANICKAM

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v.

METROPOLITAN TRANSPORT CORP. LTD.
(Civil Appeal Nos.4816-4817 of 2013)

JULY 1, 2013

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[P. SATHASIVAM AND M.Y. EQBAL, JJ.]

Motor Vehicles Act, 1988 – Accident – Compensation – Determination of – “Just compensation” – Held: No precise formula to determine the quantum of compensation – Concept of “just compensation” suggests application of fair and equitable principles and a reasonable approach on the part of the tribunals and the courts – Law values life and limb in a free country in generous scales – Adjudicating authority to take note of the sufferings of the injured person which would include his inability to lead a full life, his incapacity to enjoy the normal amenities which he would have enjoyed but for the injuries and his ability to earn as much as he used to earn or could have earned.

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Motor Vehicles Act, 1988 – Accident – Compensation – Grant of – Under both the heads viz., loss of earning/earning capacity as well as permanent disability – Propriety – Victim was 45 year old proprietor of a furniture mart – He had sustained 85% permanent disability by way of amputation of his right leg below the knee – Held: Considering the age and avocation of the appellant and the fact that he cannot do the same work as he was doing prior to the accident due to amputation of his right leg, Tribunal fully justified in fixing a sum of Rs. 1 lakh towards 85% permanent disability –High Court erred in setting aside the award of Rs.1 Lakh under the head ‘permanent disability’ on the ground that substantial amount had been fixed under the head ‘loss of earning’ and ‘loss of earning capacity’.

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A *Motor Vehicles Act, 1988 – Accident – Compensation – Grant of – Under the head ‘loss of earning/earning capacity’ – Appropriate multiplier – Victim was 45 year old proprietor of a furniture mart – He sustained 85% permanent disability by way of amputation of his right leg below the knee – High Court reduced the multiplier from 13 to 10 – Propriety – Held: High Court, while computing the loss of earning capacity, without any acceptable reason, applied the multiplier of 10 – Though multiplier method cannot be mechanically applied to ascertain the future loss of income or earning power, depending on various factors such as nature and extent of disablement, avocation of the injured whether it would affect his or her employment or earning power, the loss of income or earnings may be ascertained by applying the same as provided under the second Schedule to the Act – Inasmuch as in the case on hand, on the date of the incident, the age of the claimant was 45 years, proper multiplier in terms of the second Schedule is 13 which was rightly applied by the Tribunal.*

E **The appellant was the proprietor of a Furniture Mart and 15 persons were working under him. In view of an accident, he sustained 85% permanent disability by way of amputation of his right leg below the knee. The appellant was aged about 45 years at the time of the accident.**

F **The Tribunal determined the income of appellant as Rs. 8,000/- per month and awarded a sum of Rs. 9,42,822/- as compensation with interest @ 12% p.a.. The High Court disallowed claim under the head permanent disability and also reduced the multiplier as provided in the second Schedule to the Act from 13, as adopted by the Tribunal, to 10. The total compensation amount was reduced to Rs.6,72,822/-**

H **The present appeals were preferred by the victim/ claimant for enhancement of the compensation, wherein**

question arose for consideration as to whether compensation in a motor vehicle accident case is payable to a claimant for both heads, viz., loss of earning/earning capacity as well as permanent disability.

Partly allowing the appeals, the Court

HELD: 1. In matters of determination of compensation, particularly, under the Motor Vehicles Act, both the tribunals and the High Courts are statutorily charged with a responsibility of fixing a "just compensation". Determination of "just compensation" cannot be equated to a bonanza. On the other hand, the concept of "just compensation" suggests application of fair and equitable principles and a reasonable approach on the part of the tribunals and the courts. The determination of quantum in motor accidents cases and compensation under the Workmen's Compensation Act, 1923 must be liberal since the law values life and limb in free country in generous scales. The adjudicating authority, while determining the quantum of compensation, has to take note of the sufferings of the injured person which would include his inability to lead a full life, his incapacity to enjoy the normal amenities which he would have enjoyed but for the injuries and his ability to earn as much as he used to earn or could have earned. While computing compensation, the approach of the tribunal or a court has to be broad based and sometimes it would involve some guesswork as there cannot be any precise formula to determine the quantum of compensation. [Para 12] [361-A-F]

2.1. The High Court committed an error in setting aside the award amount of Rs. 1,00,000/- under the head 'permanent disability' on the ground that substantial amount had been fixed under the head 'loss of earning' and 'loss of earning capacity'. [Para 13] [361-F-G]

A 2.2. Considering the age and avocation of the appellant and the fact that he cannot do the same work as he was doing prior to the accident due to amputation of his right leg, the Tribunal is fully justified in fixing a sum of Rs. 1,00,000/- towards 85% permanent disability.

B The order of the High Court setting aside the compensation under the said head cannot be sustained. Accordingly, in addition to the amount determined by the High Court, a sum of Rs. 1,00,000/-, as awarded by the Tribunal, is granted towards 85% permanent disability.

C [Para 14] [362-B-D]

Cholan Roadways Corporation Limited, Kumbakonam vs. Ahmed Thambi and Others 2006 (4) CTC 433 – held overruled.

D *Ramesh Chandra vs. Randhir Singh and Others 1990 (3) SCC 723: 1990 (3) SCR 1; B. Kothandapani vs. Tamil Nadu State Transport Corporation Limited (2011) 6 SCC 420: 2011 (6) SCR 791; K. Suresh vs. New India Assurance Co. Ltd. and Another 2012 (10) JT 484 – relied on.*

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3. The High Court, while computing the loss of earning capacity, without any acceptable reason, applied the multiplier of 10 and fixed a sum of Rs. 3,20,000 (Rs. 8000/- x 10x12x1/3) as against Rs. 4,00,000/- determined by the Tribunal. Though multiplier method cannot be mechanically applied to ascertain the future loss of income or earning power, depending on various factors such as nature and extent of disablement, avocation of the injured whether it would affect his or her employment or earning power, the loss of income or earnings may be ascertained by applying the same as provided under the second Schedule to the Act. Inasmuch as in the case on hand, the age of the claimant, i.e., 45 years, on the date of the incident has not been disputed by the Transport Corporation, the proper multiplier in terms of the second

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Schedule is 13 which was rightly applied by the Tribunal. Accordingly, while modifying the quantum under the loss of earning capacity, namely, Rs. 3,20,000/- as fixed by the High Court, the amount is restored to Rs. 4,00,000/-, as determined by the Tribunal. [Paras 15, 16] [362-E-H; 363-A-C]

United India Insurance Co. Ltd. vs. Veluchamy and Anr.
2005 (1) CTC 38 – referred to.

4. Though, the appellant prayed for interest @ 12%, this Court is not inclined to accept the same, on the other hand, the rate of interest, namely, 9%, as fixed by the High Court, is reasonable and acceptable. [Para 17] [363-C-D]

5. The appellant is thus entitled to the following additional amount: a) Towards 85% permanent disability: Rs. 1,00,000/-; b) Towards loss of earning/earning capacity by applying the multiplier 13 (in addition to the amount of Rs. 3,20,000/- fixed by the High Court): Rs. 80,000/-. Accordingly, in addition to the amount awarded by the High Court, the claimant/the appellant is entitled to an additional amount of Rs. 1,80,000/-. Altogether the appellant is entitled to a total compensation of Rs. 8,52,822/- with interest at the rate of 9% from the date of claim petition till the date of deposit. [Para 18] [363-D-G]

Case Law Reference:

2006 (4) CTC 433	held overruled	Paras 8, 10	
1990 (3) SCR 1	relied on	Para 9	
2011 (6) SCR 791	relied on	Para 10, 11	G
2012 (10) JT 484	relied on	Para 11	
2005 (1) CTC 38	referred to	Para 16	

A From the Judgment and Order dated 29.01.2007 of the High Court of Judicature at Madras in C.M.A. (NPD-B) Nos. 82 and 150 of 2001.

B P.B. Suresh, Vipin Nair, U. Banerjee, Temple Law Firm, for the Appellant.

B. Balaji, R. Rakesh Sharma, for the Respondent.

The Judgment of the Court was delivered by

C **P. SATHASIVAM, J.** (1) Leave granted.

D 2. The important question which arise for consideration in these appeals is whether compensation in a motor vehicle accident case is payable to a claimant for both heads, viz., loss of earning/earning capacity as well as permanent disability.

E 3. These appeals are directed against the common judgment and order dated 29.01.2007 passed by the High Court of Judicature at Madras in C.M.A. Nos. 82 and 150 of 2001 whereby the High Court partly allowed the appeal filed by the respondent-herein and dismissed the appeal preferred by the appellant-herein.

4. Brief facts:

F (a) On 27.01.1997, when the claimant/the appellant herein was alighting from the bus owned by the Metropolitan Transport Corporation Limited (in short "the Transport Corporation") – respondent herein, the conductor of the bus blown the whistle without noticing him. Due to the sudden movement of the bus, the appellant fell down and the rear wheel of the bus rammed
G over on his right leg and he sustained severe injuries on his head, right hand and chest. After treatment, his right leg below the knee was amputated. At the time of accident, he was 45 years of age. He made a claim before the Motor Accidents Claims Tribunal ("the Tribunal" for short), Chennai in O.P. No.

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1667 of 1997 claiming a sum of Rs. 21,00,000/- as compensation. A

(b) The Tribunal, after holding that the accident was caused due to the negligence of the driver of the bus belonging to the Transport Corporation, by order dated 30.11.2000, awarded a sum of Rs. 9,42,822/- as total compensation by adopting the multiplier of 13 in terms of the second schedule to the Motor Vehicles Act, 1988 (hereinafter referred to as "the Act"). B

(c) Dis-satisfied with the award of the Tribunal, the appellant preferred an appeal being CMA No. 150 of 2001 before the High Court praying for higher compensation, on the other hand, the Transport Corporation also preferred an appeal being CMA No. 82 of 2001 for reduction of the compensation. C

(d) The High Court, by impugned common judgment dated 29.01.2007, reduced the compensation from Rs. 9,42,822/- to Rs. 6,72,822/-. Aggrieved by the reduction in the compensation amount, the appellant has preferred the present appeals by way of special leave for enhancement of the compensation. D

5. Heard Mr. P.B. Suresh, learned counsel for the claimant/appellant and Mr. B. Balaji, learned counsel for the Respondent-Transport Corporation. E

Discussion:

6. As posed at the first instance, mainly, we have to consider whether the High Court is justified in disallowing the claim under the head permanent disability when the appellant had sustained 85% permanent disability by way of amputation of his right leg below the knee. Incidentally, this Court has to consider whether the High Court is equally justified in reducing the multiplier from 13, as adopted by the Tribunal, to 10. F
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7. Inasmuch as the present appeals are preferred by the victim/claimant for enhancement of the compensation, there is no need to traverse the facts leading to the accident. In other H

A words, the finding that the accident occurred due to the negligent driving of the driver of the bus belonging to the Transport Corporation has become final.

B 8. It is also not in dispute that based on the evidence of the claimant (PW-1), the evidence with regard to permanent disability of 85%, amputation of the right leg below the knee, his age and avocation, the Tribunal has awarded a sum of Rs. 9,42,822/- as compensation with interest @ 12% p.a. on the said amount. The High Court, while considering the appeals of C the Transport Corporation as well as the claimant, placed reliance on a Full Bench decision of the same Court in *Cholan Roadways Corporation Limited, Kumbakonam vs. Ahmed Thambi and Others*, 2006 (4) CTC 433 wherein it was held that if the injured is compensated for loss of earning and loss of earning capacity, compensation need not be awarded D separately for permanent disability. Based on the said principle laid down in the Full Bench decision, learned Single Judge directed a reduction of Rs. 1,00,000/-, fixed under the head 'permanent disability', from the total award.

E 9. This Court, in *Ramesh Chandra vs. Randhir Singh and Others*, 1990 (3) SCC 723, has categorically held that compensation can be payable both for loss of earning as well as disability suffered by the claimant.

F 10. In addition to the same, in *B. Kothandapani vs. Tamil Nadu State Transport Corporation Limited*, (2011) 6 SCC 420, this Court (speaking through one of us) after considering the Full Bench decision of the Madras High Court in *Cholan Roadways (supra)*, disagreed with the said view and granted separate compensation under the head permanent disability G even after grant of compensation under loss of earning/earning capacity. The following conclusion is relevant:

H "14. In *Ramesh Chandra v. Randhir Singh* while considering award of compensation for permanent disability (right foot amputated) caused by the accident

under Section 110-B of the Motor Vehicles Act, 1939 which is similar to Section 168(1) of the Motor Vehicles Act, 1988, this Court upheld the award of compensation under the separate head of pain, suffering and loss of enjoyment of life, apart from the head of loss of earnings. The discussion and ultimate conclusion are relevant which read as under:

"7. With regard to Ground 19 covering the question that the sum awarded for pain, suffering and loss of enjoyment of life, etc. termed as general damages should be taken to be covered by damages granted for loss of earnings is concerned that too is misplaced and without any basis. The pain and suffering and loss of enjoyment of life which is a resultant and permanent fact occasioned by the nature of injuries received by the claimant and the ordeal he had to undergo. If money be any solace, the grant of Rs. 20,000 to the claimant represents that solace. Money solace is the answer discovered by the law of torts. No substitute has yet been found to replace the element of money. This, on the face of it appeals to us as a distinct head, quite apart from the inability to earn livelihood on the basis of incapacity or disability which is quite different. The incapacity or disability to earn a livelihood would have to be viewed not only *in praesenti* 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. For these reasons, we are of the considered view that the contentions raised by the truck owner appellants in that behalf must be negated and we hereby negative them."

15. It is true that the compensation for loss of earning power/capacity has to be determined based on various

A 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
 B 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
 C 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.

After laying down the above ratio regarding merits of that
 case, it was concluded:

D “16. In the case on hand, two doctors had explained the
 nature of injuries, treatment received and the disability
 suffered due to partial loss of eyesight and amputation of
 middle finger of the right hand and we have already
 E 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
 eyesight and loss of middle finger of the right hand, not
 only affect his earning capacity but also affect normal
 avocation and day-to-day work. In such circumstance, we
 F are of the view that the Tribunal was fully justified in granting
 a sum of Rs. 1,50,000 towards permanent disability.”

The above decision makes it clear that the ratio laid down
 by the Full Bench of the Madras High Court in *Cholan*
 G *Roadways (supra)* has not been accepted by this Court.

11. Following the ratio in *B. Kothandapani (supra)* in the
 subsequent decision, viz., *K. Suresh vs. New India Assurance*
Co. Ltd. and Another, 2012 (10) JT 484, another Bench of this
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CORP. LTD. [P. SATHASIVAM, J.]

Court, awarded separate amount for permanent disability apart from fixing compensation under the head 'loss of earning' or 'earning capacity'. A

12. In matters of determination of compensation, particularly, under the Motor Vehicles Act, both the tribunals and the High Courts are statutorily charged with a responsibility of fixing a "just compensation". It is true that determination of "just compensation" cannot be equated to a bonanza. On the other hand, the concept of "just compensation" suggests application of fair and equitable principles and a reasonable approach on the part of the tribunals and the courts. We hold that the determination of quantum in motor accidents cases and compensation under the Workmen's Compensation Act, 1923 must be liberal since the law values life and limb in free country in generous scales. The adjudicating authority, while determining the quantum of compensation, has to take note of the sufferings of the injured person which would include his inability to lead a full life, his incapacity to enjoy the normal amenities which he would have enjoyed but for the injuries and his ability to earn as much as he used to earn or could have earned. While computing compensation, the approach of the tribunal or a court has to be broad based and sometimes it would involve some guesswork as there cannot be any precise formula to determine the quantum of compensation. B
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13. Keeping the above principles in mind, there is no difficulty in holding that the High Court has committed an error in setting aside the award amount of Rs. 1,00,000/- under the head 'permanent disability' on the ground that substantial amount had been fixed under the head 'loss of earning' and 'loss of earning capacity'. It is not in dispute that at the time of the accident, the appellant was aged about 45 years and he was the proprietor of Parvathy Furniture Mart and 15 persons were working under him. Based on the evidence, the Tribunal has determined his income as Rs. 8,000/- per month. F
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14. It is borne out from the records that the claimant was H

A treated as an inpatient in Pavithra Hospital from 27.01.1997 to 26.02.1997, and thereafter, he was treated as an outpatient vide Exh. P-1, which is the Discharge Summary. Further, it is seen from his evidence that he lost his earnings during the period of treatment from 28.01.1997 to 31.12.1997, and
 B because of severe injuries, his right leg below the knee was amputated. Considering his age, avocation and the fact that he cannot do the same work as he was doing prior to the accident due to amputation of his right leg, we are of the view that the Tribunal is fully justified in fixing a sum of Rs. 1,00,000/- towards
 C 85% permanent disability. The order of the High Court setting aside the compensation under the said head cannot be sustained. Accordingly, in addition to the amount determined by the High Court, we grant a sum of Rs. 1,00,000/-, as awarded by the Tribunal, towards 85% permanent disability.

D 15. According to the counsel for the appellant, while determining future loss of earning/earning capacity, the Tribunal rightly applied the multiplier of 13 as provided in the second Schedule to the Act. On the other hand, without any acceptable reason/basis, the High Court reduced the multiplier from 13 to
 E 10.

16. In para 16 of the impugned judgment, the High Court, while computing the loss of earning capacity, without any acceptable reason, applied the multiplier of 10 and fixed a sum
 F of Rs. 3,20,000 (Rs. 8000/- x 10x12x1/3) as against Rs. 4,00,000/- determined by the Tribunal. Learned counsel appearing for the appellant submitted that even for determining just and fair compensation in the case of injury/permanent disablement, the tribunal/courts are free to apply multiplier
 G method for which he relied on a decision of the Madras High Court in *United India Insurance Co. Ltd. vs. Veluchamy and Anr.* 2005 (1) CTC 38. While agreeing with the said decision, though multiplier method cannot be mechanically applied to ascertain the future loss of income or earning power, depending
 H on various factors such as nature and extent of disablement,

avocation of the injured whether it would affect his or her employment or earning power, we are of the view that the loss of income or earnings may be ascertained by applying the same as provided under the second Schedule to the Act. Inasmuch as in the case on hand, the age of the claimant, i.e., 45 years, on the date of the incident has not been disputed by the Transport Corporation, we are of the view that the proper multiplier in terms of the second Schedule is 13 which was rightly applied by the Tribunal. Accordingly, while modifying the quantum under the loss of earning capacity, namely, Rs. 3,20,000/- as fixed by the High Court, we restore the amount to Rs. 4,00,000/- as determined by the Tribunal.

17. Though, learned counsel for the appellant prayed for interest @ 12%, we are not inclined to accept the same, on the other hand, the rate of interest, namely, 9%, as fixed by the High Court, is reasonable and acceptable.

(18) In the light of the above discussion, the appellant is entitled to the following additional amount:

- a) Towards 85% permanent disability ... Rs. 1,00,000/-
- b) Towards loss of earning/earning capacity
by applying the multiplier 13 ... Rs. 80,000/-
(in addition to the amount of
Rs. 3,20,000/- fixed by the High Court)

Accordingly, in addition to the amount awarded by the High Court, the claimant/the appellant herein is entitled to an additional amount of Rs. 1,80,000/-. Further, we make it clear that altogether the appellant is entitled to a total compensation of Rs. 8,52,822/- with interest at the rate of 9% from the date of claim petition till the date of deposit.

19. The appeals filed by the claimant/appellant are allowed in part to the extent mentioned above with no order as to costs.