

A ICICI LOMBARD GENERAL INSURANCE CO. LTD.

v.

AJAY KUMAR MOHANTY & ANR.

B (Civil Appeal No. 7181 of 2015)

MARCH 06, 2018

**[DIPAK MISRA, CJI, A. M. KHANWILKAR AND  
DR. D. Y. CHANDRACHUD, JJ.]**

C *Motor Vehicles Act, 1988: s. 166 – Compensation –*  
D *Computation of – Rash and negligent act of the driver of the vehicle*  
E *– Claimant met with an accident sustaining disability – Evidence of*  
F *the doctor that the disability to the extent of 55 % – Award of*  
G *Rs. 22,85,322/- as compensation by the tribunal, however, High*  
H *Court reduced the amount to Rs. 12,00,000/- – On appeal, held:*  
*While calculating the income, the tribunal committed an error of*  
*computation – Claim for compensation on the basis that the disability*  
*was permanent not established – Annual loss of income comes to*  
*Rs. 79,877/- – Disability being of a temporary nature, compensation*  
*of Rs. 5 lakhs is awarded towards loss of income, Rs. 2 lakhs towards*  
*trauma, pain and suffering, and Rs. 2,09,622/- towards medical*  
*expenses – Thus, Rs. 9,10,000/- awarded with interest @ 9 per cent*  
*p.a. from the date of the filing of the petition.*

**Claimant sustained disability as a result of a motor accident.**  
F **Tribunal awarded Rs. 22,85,322/- as compensation. Appellant-**  
G **Insurer filed an appeal challenging the compensation amount.**  
H **The High Court reduced the compensation to Rs. 12,00,000/-**  
**and interest from 7.5 per cent per annum to 7.0 per cent per**  
**annum. Hence, the present appeal.**

G **Disposing of the appeals, the Court**

**HELD: 1.1 On perusing the order of the tribunal, there is**  
**merit in the submission of the insurer that while calculating the**  
**income, the tribunal committed an error of computation. The**  
**tribunal on the basis of the income tax returns for 2007, 2008**  
H **and 2009 arrived at an average income of Rs. 1,45,231/-. However,**

the tribunal thereafter noted that the average income comes to Rs. 2,62,372/-. Ultimately, the tribunal proceeded on the annual income of Rs. 2,22,000/- on the basis of the testimony of the claimant that he was earning Rs. 18,500/- per month. This is contradictory. On the basis of the finding of the tribunal that the average income of the claimant for the previous three years was Rs. 1,45,231/-, it would be necessary to take into account the evidence of PW2-doctor that the disability is to the extent of 55 per cent. In other words, the loss of earning as a result of the said disability would work out to Rs. 79,877/- per year. [Para 7] [47-C-E]

1.2 In the instant case, the doctor admitted to having made an interpolation in the disability certificate. The evidence indicates that the disability is temporary and not permanent. The doctor admitted that the disability certificate indicated a tick mark on the word 'permanent' by mistake. He further stated that the disability in the instant case was likely to improve. Having regard to all the facts and circumstances, the claim for compensation on the basis that the disability was permanent was clearly not established. [Para 11, 12] [50-B-D]

1.3 There was no basis to award an amount of Rs.20,75,700/-. The tribunal awarded an amount of Rs. 2,09,622/- towards medical expenses. The figure of an annual loss of income of Rs. 79,877/- is accepted. The disability being of a temporary nature, compensation of Rs. 5 lakhs is awarded towards loss of income. Compensation of Rs. 2 lakhs is awarded towards trauma, pain and suffering. In addition, the claimant is entitled to medical expenses of Rs. 2,09,622/-. The ends of justice would be met by directing a payment of Rs. 9,10,000/- . The claimant would be entitled to interest at the rate of 9 per cent per annum from the date of the filing of the petition. The impugned judgment and order of the High Court is set aside. [Para 13] [50-F]

*Sri Laxman @ Laxman Mourya v Divisional Manager, Oriental Insurance Co. Ltd (2011) 12 SCALE 658 ; Govind Yadav v New India Insurance Company Limited (2011) 10 SCC 683 ; R.D. Hattangadi v Pest Control (India) (P) Ltd. (1951) 1 SCC 551 ; Nizam's*

- A *Institute of Medical Sciences v Prasanth S. Dhananka* [2009] 9 SCR 313 : (2009) 6 SCC 1 ; *Reshma Kumari v Madam Mohan* [2009] 11 SCR 305 : (2009) 13 SCC 422 ; *Arvind Kumar Mishra v New India Assurance Co. Ltd .*[2010] 11 SCR 857 : (2010) 10 SCC 254 ; *Raj Kumar v Ajay Kumar* [2010] 13 SCR 179 : (2011) 1 SCC 343 ; *Subulaxmi v MD Tamil Nadu State Transport Corporation* [2012] 9 SCR 962 : (2012) 10 SCC 177 – referred to.

Case Law Reference

- |   |                     |             |        |
|---|---------------------|-------------|--------|
| C | 2011 (12) SCALE 658 | referred to | Para 9 |
|   | (2011) 10 SCC 683   | referred to | Para 9 |
|   | (1951) 1 SCC 551    | referred to | Para 9 |
| D | [2009] 9 SCR 313    | referred to | Para 9 |
|   | [2009] 11 SCR 305   | referred to | Para 9 |
|   | 2010 (11) SCR 857   | referred to | Para 9 |
| E | [2010] 13 SCR 179   | referred to | Para 9 |
|   | [2012] 9 SCR 962    | referred to | Para 9 |

- F CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7181 of 2015.

From the Judgment and Order dated 15.04.2015 of the High Court of Orissa at Cuttack in M.A C A. No. 1020 of 2014

WITH

- G Civil Appeal No.1879 of 2016.

Ms. Neerja Sachdeva, Ms. Meera Mathur, Pranaya Kumar Mohapatra, Advs for the Appellant.

H

The Judgment of the Court was delivered by A

**DR. D. Y. CHANDRACHUD, J.** 1. In a claim for compensation under Section 166 of the Motor Vehicles Act, arising out of a disability sustained by the claimant as a result of a motor accident, the Tribunal awarded an amount of Rs. 22,85,322/-. The High Court in an appeal filed by the insurer reduced the compensation to Rs. 12,00,000/- Interest was reduced from 7.5 per cent per annum to 7.0 per cent. The only reasoning contained in support of the order of the High Court reads as follows: B

“Considering the grounds taken in appeal and the submissions made by the learned counsel for the parties and keeping in view the findings of the learned Tribunal given in the impugned award with regard to the quantum of compensation amount awarded and the basis on which the same has been arrived at, I feel, the interest of justice would be best served, if the awarded compensation amount of Rs. 22,85,322/- is modified and reduced to Rs. 12,00,000/-. The award of interest @ 7.5% per annum is also modified and reduced to 7% only. Accordingly, the claimant is entitled to the modified compensation amount of Rs. 12,00,000/- along with interest @ 7% per annum from the date of filing of the Claim application. The impugned award is modified to the said extent.” C D E

2. *Ex-facie*, there has been no application of mind by the High Court to the evidence on the record and to the relevant facts and circumstances. The above extract cannot be regarded as the expression of a reasoned view. Ordinarily, we would have remitted the case back to the High Court for a fresh determination. However, we are inclined not to do so in order to prevent a miscarriage of justice which delay in itself is likely to occasion. The accident took place on 25 April 2009 when the appellant was 32 years of age. The judgment of the Tribunal was rendered on 26 February 2014. The High Court delivered its judgment on 15 April 2015. Leave was granted by this Court on 25 February 2016. Hence, we have heard the learned counsel appearing on behalf of the contesting parties on merits and proceed to resolve the dispute so as to render finality to the case. F G

3. The accident in question took place on 25 April 2009 when the claimant was proceeding from Keonjhar to Badbil. The vehicle fell over H

A a bridge of NH 215. The claimant was rescued by the villagers and was  
shifted to hospital for treatment. He suffered from a fracture to the left  
elbow and femur. The Tribunal entered a finding of fact that the evidence  
of the claimant remained unshaken and that the accident was caused by  
the rash and negligent act of the driver of the vehicle. The vehicle was  
insured with ICICI Lombard General Insurance Company Ltd. (the  
B insurer).

4. While assessing the claim for compensation, the Tribunal noted  
the evidence of PW2, the Doctor who had issued a disability certificate  
to the claimant. The Doctor opined that the disability was temporary and  
not permanent. It appears that an admission was elicited during the course  
C of the cross-examination to the effect that he had made certain  
interpolations in the disability certificate without the consent or knowledge  
of the CDMO. The Tribunal held that whether the disability was  
permanent or temporary, it was duty bound to make an assessment.  
From the income tax returns of the claimant for 2007, 2008 and 2009,  
D the Tribunal observed that his annual income would work out to Rs.  
1,45,231/-. The Tribunal thereafter observed that the annual income was  
Rs. 2,62,372/-. The Tribunal however accepted the evidence of the  
claimant which placed his income at a lower amount of Rs. 2,22,000/-  
annually on the basis of the evidence of the claimant that as a B-Class  
contractor, he was earning Rs. 18,500/- per month. The Tribunal applied  
E a multiplier of 17 per cent. Treating the disability to be 55 per cent, on  
the basis of the certificate of the District Medical Board, Bhadrak, the  
Tribunal computed the compensation at Rs. 20,75,700/-. In addition, an  
amount of Rs. 2,09,622/- was awarded on account of medical expenses.  
A total quantum of Rs. 22,85,322/- was awarded.

F 5. Learned counsel appearing on behalf of the insurer submits  
that the order of the Tribunal is contradictory and contrary to the weight  
of the evidence. The error has been compounded by the failure of the  
High Court to attribute reasons. Counsel submits that the Tribunal  
proceeded on the manifestly erroneous basis that the claimant suffered  
G a permanent disability. It was urged that the evidence of PW 2, the  
doctor, indicates that the disability certificate was unauthorisedly  
interpolated by him. The admissions of the doctor in the course of his  
evidence that the injury was of a temporary nature and was likely to  
improve have been ignored. Moreover, it has been submitted that the  
judgment of the Tribunal, especially paragraph 10, would indicate that  
H

the Tribunal has committed serious and apparent errors of computation and there is an internal inconsistency in its reasoning. A

6. On the other hand, learned counsel appearing on behalf of the claimant submits that while PW 2 admits having interpolated the disability certificate, this should in fact weigh in favour of the claimant as the nature of the interpolation would indicate. Like the insurer, the claimant also has a grievance in regard to the fact that the order of the High Court is not reasoned. However, what the claimant submits is that there was no justification for the High Court to reduce the quantum of compensation awarded by the Tribunal. B

7. On perusing the order of the Tribunal, we find merit in the contention of the insurer that while calculating the income in paragraph 10 of its order, the Tribunal has committed an error of computation. The Tribunal has on the basis of the income tax returns for 2007, 2008 and 2009 arrived at an average income of Rs. 1,45,231/-. However, the Tribunal has thereafter noted that the average income comes to Rs. 2,62,372/-. Ultimately, the Tribunal proceeds on the annual income of Rs. 2,22,000/- on the basis of the testimony of the claimant that he was earning Rs. 18,500/- per month. This is contradictory. In our view, on the basis of the finding of the Tribunal that the average income of the claimant for the previous three years was Rs. 1,45,231/-, it would be necessary to take into account the evidence of PW2 that the disability is to the extent of 55 per cent. In other words, the loss of earning as a result of the aforesaid disability would work out to Rs. 79,877/- per year. C D E

8. In arriving at the quantification of compensation, we must be guided by the well-settled principle that compensation can be granted both on account of permanent disability as well as loss of future earnings, because one head relates to the impairment of the person's capacity and the other to the sphere of pain and suffering on account of loss of enjoyment of life by the person himself. F

9. In **SriLaxman @ Laxman Mourya v Divisional Manager, Oriental Insurance Co. Ltd**<sup>1</sup>, this Court held thus: G

“The ratio of the above noted judgments is that if the victim of an accident suffers permanent or temporary disability, then efforts should always be made to award adequate compensation not only for the physical injury and treatment, but also for the pain, suffering

<sup>1</sup>2011 (12) SCALE 658

A and trauma caused due to accident, loss of earnings and victim's inability to lead a normal life and enjoy amenities, which he would have enjoyed but for the disability caused due to the accident."

In **Govind Yadav v New India Insurance Company Limited**<sup>2</sup>, this Court after referring to the pronouncements in **R.D. Hattangadi v Pest Control (India) (P) Ltd.**<sup>3</sup>, **Nizam's Institute of Medical Sciences v Prasanth S. Dhananka**<sup>4</sup>, **Reshma Kumari v Madam Mohan**<sup>5</sup>, **Arvind Kumar Mishra v New India Assurance Co. Ltd.**<sup>6</sup>, **Raj Kumar v Ajay Kumar**<sup>7</sup> held thus:

C "18. In our view, the principles laid down in Arvind Kumar Mishra v. New India Assurance Co. Ltd. and Raj Kumar v. Ajay Kumar must be followed by all the Tribunals and the High Courts in determining the quantum of compensation payable to the victims of accident, who are disabled either permanently or temporarily. If the victim of the accident suffers permanent disability, then efforts should always be made to award adequate compensation not only for the physical injury and treatment, but also for the loss of earning and his inability to lead a normal life and enjoy amenities, which he would have enjoyed but for the disability caused due to the accident." (Id at page 693)

E These principles were reiterated in a judgment delivered by one of us (Justice Dipak Misra, as the learned Chief Justice then was) in **Subulaxmi v MD Tamil Nadu State Transport Corporation**<sup>8</sup>.

F 10. In the present case, the evidence of PW2 Dr Umakanta Jena indicates that he had initially, before issuing the disability certificate, examined the shoulder joint, elbow joint and left femur as per the discharge certificate. The discharge certificate indicated that the injuries sustained were grievous in nature. The Doctor initially placed a tick mark over the word 'permanent'. However, subsequently he made an interpolation by cutting the word 'permanent' and "not likely to improve". The evidence of the Doctor is reproduced below, insofar as it is material:

G <sup>2</sup>(2011) 10 SCC 683

<sup>3</sup>(1951) 1 SCC 551

<sup>4</sup>(2009) 6 SCC 1

<sup>5</sup>(2009) 13 SCC 422

<sup>6</sup>(2010) 10 SCC 254

<sup>7</sup>(2011) 1 SCC 343

H <sup>8</sup>(2012) 10 SCC 177

“4) The disability is temporary but not permanent. The disability is likely to improve. The disability certificate is the original one. By mistake, I gave a tick mark on the word “permanent”. Per day about one hundred disability certificates are issued. So, I committed this wrong. I have not mentioned which documents I verified prior to issuance of this disability certificate. There is nothing in the certificate to show that there was nailing. Particularly in this case, the disability may improve. Any fracture of extremity will cause disability. I cannot give any authority to the opinion of my above sentence.

5) It is not a fact that the percentage of disability has been made by me being gained over by the injured and that there was no disability. It is not a fact that being gained over by the injured I gave this disability certificate.

TO COURT:-

Q. No. 1:- Whether the certificate issued by you is creating confusion? D

Ans; Yes.

Q. No. 2: Whether you will be paid T.A. and D.A. from State Exchequer for your mistake? E

Ans:, No, I should be paid.

Q. No. 3:- Whether my attendance in the court is a govt. duty or C.L.?

Ans: For my mistake I should take C.L.

Q. No. 4:- Can you explain why you interpolated the certificate which was signed by 4 doctors including CDMO, Bhadrak? F

Ans: I cannot explain.

Q. No. 5:- Was not it desirable to obtain the consent of other three doctors before cutting and putting tick mark and making interpolation on an already prepared public document? G

H

A            Ans: I should have obtained the consent and signature of all other signatories before interpolating the document.”

B            11. The doctor has admitted to having made an interpolation in the disability certificate. The above evidence indicates that the disability is temporary and not permanent. The Doctor admitted that the disability certificate indicated a tick mark on the word ‘permanent’ by mistake. He further stated that the disability in the present case was likely to improve.

C            12. Having regard to all these facts and circumstances, we find merit in the contention that the claim for compensation on the basis that the disability was permanent was clearly not established. There was no basis to award an amount of Rs. 20,75,700/-. The Tribunal has awarded an amount of Rs. 2,09,622/- towards medical expenses. We accept the figure of an annual loss of income of Rs. 79,877/-. The disability being of a temporary nature, we award compensation of Rs. 5 lakhs towards loss of income. We allow compensation of Rs. 2 lakhs towards trauma, pain and suffering. In addition, the claimant is entitled to medical expenses of Rs. 2,09,622. We are of the view that the ends of justice would be met by directing a payment of Rs. 9,10,000/-. The claimant shall be entitled to interest at the rate of 9 per cent per annum from the date of the filing of the petition. The insurer shall deposit the compensation along with interest before the Tribunal within twelve weeks which shall be disbursed to the claimant on proper identification.

E            13. For the above reasons, we set aside the impugned judgment and order of the High Court. Both the appeals are disposed of in terms of the directions issued above. There shall be no order as to costs.

Nidhi Jain

Appeals disposed of.