

T.J. Parameshwarappa @ ... vs The Branch Manager New India Assurance ... on 18 November, 2022

Author: B.V. Nagarathna

Bench: B.V. Nagarathna, B.R. Gavai

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS.8598-8599 OF 2022
(Arising out of Special Leave Petition (C) Nos.11730-11731 of 2021)

T. J. PARAMESHWARAPPA @
PARAMESHWARAPPA @
J.T. PARAMESHWARAPPA @
TALALKENA GOWDRA PARAMESHWARAPPA

.....APPELLANT

VERSUS

THE BRANCH MANAGER,
NEW INDIA ASSURANCE
....RESPONDENT(S)

CO. LTD. & ORS.

J U D G M E N T

NAGARATHNA J.

Leave granted.

2. These appeals assail the correctness of the judgment and award passed by the High Court of Karnataka at Bengaluru in M.F.A. No.48 of 2017 connected with M.F.A. No.7972 of 2016 (MV) dated 16.10.2020. M.F.A. No.48 of 2017 was filed by the insurer – New India Assurance Co. Ltd., while M.F.A. No.7972 of 2016 (MV) was filed by the insured claimant, both being aggrieved by the

judgment and award dated 16.09.2016 passed by the Ist Addl. Senior Civil Judge & IVth MACT at Chitradurga in MVC No.1091 of 2015. By the said judgment and award, the Motor Accidents Claims Tribunal (hereinafter referred to as “the Tribunal”, for the sake of convenience) awarded a sum of Rs.21,08,400/-(Rupees Twenty-one lakhs eight thousand and four hundred only) with interest at 8% p.a. from the date of filing of the claim petition till date of deposit. This was in respect of an accident that occurred on 15.05.2015 in which the appellant-claimant was injured. Being aggrieved by the reduction in the total compensation by the High Court from Rs.21,08,400/- to Rs.7,37,604/- with interest at the rate of 6% p.a. from the date of petition till its realization, the injured-claimant has filed these appeals.

3. It is no longer in dispute that on 15.05.2015 at about 03:35 p.m. appellant-claimant was travelling in the Tanker Lorry bearing No.KA-01-AG-2266 as a cleaner from Kidlike to Hassan along with driver P. Jagadeesh. Near the RTO Office, Chitradurga, on NH-4 flyover, the driver of the tanker lorry drove the same in a rash and negligent manner and with high speed and dashed into the hind portion of another lorry bearing No.KA-6B-6247, as a result of which, appellant-claimant sustained comminuted fracture of tibia bones of both legs and other injuries on his body. He was shifted to B.M.C. Hospital and Research Centre, Chitradurga where he took treatment as an inpatient from 15.05.2015 to 13.06.2015 and thereafter took follow-up treatment as an outpatient. During treatment, he underwent surgery of both legs and rod and screws were inserted.

4. It is contended by the appellant that as a result of the accident he became permanently disabled and due to fracture of tibia bones of both legs and other injuries, he is unable to discharge his duties as a cleaner in the tanker lorry and hence, he has suffered both financially and physically. That he is also unable to perform his daily routine activity as he has sustained permanent disability. That he was working as a cleaner in a tanker lorry and was earning Rs.18,000/- per month and due to the disability, he is unable to earn any income. He therefore, filed the claim petition seeking compensation of Rs.20 lakhs on account of the injuries sustained by him in the road traffic accident. On contest, the Tribunal by its judgment and award dated 16.09.2016, awarded a sum of Rs.21,08,400/- together with interest at 8% p.a. from the date of petition till date of deposit, under the following heads:

“Sl. No.	Description	Amount in Rs.
1.	Pain and suffering	5,00,000/-
2.	Medical and incidental Expenses	4,00,000/-
3.	Permanent disability (40% of Rs.6,500 x 12 x 17)	5,30,400/-
4.	Future Medical Expenses	2,00,000/-
5.	Conveyance and attendant Charges	2,00,000/-
6.	Future Prospects (12 Months x 6,500)	78,000/-

7.	Marriage prospects	2,00,000/-
	Total	21,08,400/-"

In fact, the compensation awarded by the Tribunal was over and above what was sought by the appellant – claimant in the claim petition i.e. Rs.20,00,000/□

5. Being aggrieved by the said award, both the insurer as well as insured claimant filed the aforementioned appeals before the High Court. The High Court noted that the claimant had suffered lacerated wound over his forehead and fracture of mid 1/3rd tibia of right and left legs, as per Exhibit□P6. The High Court also noted that the award of compensation was on the higher side and hence, High Court reduced the compensation to Rs.7,37,604/□under the following heads: □Sl. No. Description Amount in Rs.

1. Permanent disability (20% of Rs.9,000 x 12 x 17) 3,67,200/□

2. Pain and suffering 50,000/□

3. Medical and incidental Expenses 1,20,404/□

4. Future Medical Expenses 50,000/□

5. Conveyance charges 30,000/□

6. Income during laid up period 45,000/□

7. Loss of amenities 75,000/□_____ Total 7,37,604/□No compensation was awarded towards loss of marriage prospects and loss of future prospects. Consequently, the appeals were disposed of in the above terms by the High Court.

6. We have heard the learned counsel for the appellant□claimant and respondent – insurer and perused the material on record.

7. The sum and substance of the contention of learned counsel for the appellant is that the assessment of permanent physical disability should be at 54% but the High Court had erroneously reduced it at 20% which was 34% less and therefore, these appeals have been preferred. It was further contended that the appellant was earning Rs.18,000/□per month as a cleaner of the tanker lorry but the High Court has assessed his notional income as Rs.9,000/□per month only, which is on the lower side. It was further contended that owing to the fracture of both legs, the appellant is unable to carry out his duties as a cleaner of the tanker lorry and the percentage of disability has been erroneously assessed at 20% while the doctor had assessed the permanent disability of 54%. Hence, the appellant has sought enhancement of compensation.

8. Per contra, learned counsel for the respondent – insurer supported the judgment of the High Court and submitted that these appeals ought to be dismissed as being devoid of merit.

Before proceeding to consider the appeals on merits, it would be useful to refer to the judgment of this Court in *Raj Kumar vs. Ajay Kumar and Another* (2011) 1 SCC 343, authored by Raveendran, J. wherein the general principles relating to compensation in injury cases; assessment of loss of future earnings on account of permanent disability; assessment of compensation in injury cases, have been discussed at length. The relevant paragraphs of the said judgment are extracted as under:

“5. The provision of the Motor Vehicles Act, 1988 (“the Act”, for short) makes it clear that the award must be just, which means that compensation should, to the extent possible, fully and adequately restore the claimant to the position prior to the accident. The object of awarding damages is to make good the loss suffered as a result of wrong done as far as money can do so, in a fair, reasonable and equitable manner. The court or the Tribunal shall have to assess the damages objectively and exclude from consideration any speculation or fancy, though some conjecture with reference to the nature of disability and its consequences, is inevitable. A person is not only to be compensated for the physical injury, but also for the loss which he suffered as a result of such injury. This means that he is to be compensated for his inability to lead a full life, his inability to enjoy those normal amenities which he would have enjoyed but for the injuries, and his inability to earn as much as he used to earn or could have earned. [See *C.K. Subramania Iyer v. T. Kunhikuttan Nair* [(1969) 3 SCC 64 : AIR 1970 SC 376] , *R.D. Hattangadi v. Pest Control (India) (P) Ltd.* [(1995) 1 SCC 551 : 1995 SCC (Cri) 250] and *Baker v. Willoughby* [1970 AC 467 :

(1970) 2 WLR 50 : (1969) 3 All ER 1528 (HL)].

6. The heads under which compensation is awarded in personal injury cases are the following:

Pecuniary damages (Special damages)

(i) Expenses relating to treatment, hospitalisation, medicines, transportation, nourishing food, and miscellaneous expenditure.

(ii) Loss of earnings (and other gains) which the injured would have made had he not been injured, comprising:

(a) Loss of earning during the period of treatment;

(b) Loss of future earnings on account of permanent disability.

(iii) Future medical expenses.

Non-pecuniary	damages	(General
damages)		

(iv) Damages for pain, suffering and

trauma as a consequence of the injuries.

(v) Loss of amenities (and/or loss of prospects of marriage).

(vi) Loss of expectation of life (shortening of normal longevity).

In routine personal injury cases, compensation will be awarded only under heads (i), (ii)(a) and (iv). It is only in serious cases of injury, where there is specific medical evidence corroborating the evidence of the claimant, that compensation will be granted under any of the heads (ii)(b), (iii), (v) and (vi) relating to loss of future earnings on account of permanent disability, future medical expenses, loss of amenities (and/or loss of prospects of marriage) and loss of expectation of life.

7. Assessment of pecuniary damages under Item (i) and under Item (ii)(a) do not pose much difficulty as they involve reimbursement of actuals and are easily ascertainable from the evidence. Award under the head of future medical expenses—Item (iii)—depends upon specific medical evidence regarding need for further treatment and cost thereof. Assessment of non-pecuniary damages—Items (iv), (v) and (vi)—involves determination of lump sum amounts with reference to circumstances such as age, nature of injury/deprivation/disability suffered by the claimant and the effect thereof on the future life of the claimant. Decisions of this Court and the High Courts contain necessary guidelines for award under these heads, if necessary. What usually poses some difficulty is the assessment of the loss of future earnings on account of permanent disability—Item (ii)(a). We are concerned with that assessment in this case.

Assessment of future loss of earnings due to permanent disability

8. Disability refers to any restriction or lack of ability to perform an activity in the manner considered normal for a human being. Permanent disability refers to the residuary incapacity or loss of use of some part of the body, found existing at the end of the period of treatment and recuperation, after achieving the maximum bodily improvement or recovery which is likely to remain for the remainder life of the injured. Temporary disability refers to the incapacity or loss of use of some part of the body on account of the injury, which will cease to exist at the end of the period of treatment and recuperation. Permanent disability can be either partial or total. Partial permanent disability refers to a person's inability to perform all the duties and bodily functions that he could perform before the accident, though he is able to perform some of them and is still able to engage in some gainful activity. Total permanent disability refers to a person's inability to perform any avocation or employment related activities as a result of the accident. The permanent disabilities that may arise from motor accident injuries, are of a much wider range when compared to the physical disabilities which are enumerated in the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 ("the Disabilities Act", for short). But if any of the disabilities enumerated in Section 2(i) of the Disabilities Act are the result of injuries sustained in a motor accident, they can be permanent disabilities for the purpose of claiming compensation.

9. The percentage of permanent disability is expressed by the doctors with reference to the whole body, or more often than not, with reference to a particular limb. When a disability certificate states that the injured has suffered permanent disability to an extent of 45% of the left lower limb, it is not the same as 45% permanent disability with reference to the whole body. The extent of disability of a limb (or part of the body) expressed in terms of a percentage of the total functions of that limb, obviously cannot be assumed to be the extent of disability of the whole body. If there is 60% permanent disability of the right hand and 80% permanent disability of left leg, it does not mean that the extent of permanent disability with reference to the whole body is 140% (that is 80% plus 60%). If different parts of the body have suffered different percentages of disabilities, the sum total thereof expressed in terms of the permanent disability with reference to the whole body cannot obviously exceed 100%.

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, 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.

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 the 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. (See for example, the decisions of this Court in *Arvind Kumar Mishra v. New India Assurance Co. Ltd.* [(2010) 10 SCC 254 : (2010) 3 SCC (Cri) 1258 : (2010) 10 Scale 298] and *Yadava Kumar v. National Insurance Co.Ltd.* [(2010) 10 SCC 341:(2010) 3 SCC (Cri) 1285: (2010) 8 Scale 567])

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.

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19. We may now summarise the principles discussed above:

(i) All injuries (or permanent disabilities arising from injuries), do not result in loss of earning capacity.

(ii) The percentage of permanent disability with reference to the whole body of a person, cannot be assumed to be the percentage of loss of earning capacity. To put it differently, the percentage of loss of earning capacity is not the same as the percentage of permanent disability (except in a few cases, where the Tribunal on the basis of evidence, concludes that the percentage of loss of earning capacity is the same as the percentage of permanent disability).

(iii) The doctor who treated an injured claimant or who examined him subsequently to assess the extent of his permanent disability can give evidence only in regard to the extent of permanent disability. The loss of earning capacity is something that will have to be assessed by the Tribunal with reference to the evidence in entirety.

(iv) The same permanent disability may result in different percentages of loss of earning capacity in different persons, depending upon the nature of profession, occupation or job, age, education and other factors.

9. Applying the aforesaid principles to the instant case, it is noted that the appellant herein let in his evidence as PW❏ and his doctor (Dr. M.S. Rajesh) was examined as PW❏. He produced documents at Exhibit❏1 to Exhibit❏126 in support of their evidence. On the other hand, the respondents did not lead any evidence. However, a copy of the Exhibit ❏R1, i.e., Insurance Policy was exhibited by consent.

10. It is noted that the appellant herein sustained comminuted bone fracture of tibia on both legs. He was operated upon twice and was hospitalized for thirty❏six days cumulatively. As per PW❏ (the doctor who treated him), there was 54% disability despite the treatment given to the appellant herein. The appellant was treated as an inpatient from 15.05.2015 to 13.06.2015. He underwent wound debridement OR & IF with interlocking nail and on 26.05.2015 secondary suturing of right leg was done. Later in the year 2016 the claimant was hospitalized from 02.03.2016 to 07.03.2016 and treated with freshening of the ends of fractured fragments and cotico❏cancellous bone grafting from the contra lateral iliac crest with partial fibulectomy done on 03.03.2016. He also took treatment as an outpatient on 30.06.2015 and 30.12.2015.

11. PW❏❏doctor, who treated the appellant❏claimant has assessed permanent disability of 54% which we find is on the higher side. As the claimant sustained comminuted fracture of tibia bones of both legs, we assess the whole❏body disability at 30%. We also propose to enhance the compensation under the heads of pain and suffering due to two surgeries undergone and future surgeries to be undergone. Also towards loss of future amenities and towards loss of income during laid up period for a period of twelve months compensation is enhanced.

12. In view of the aforesaid evidence let in by the claimant, we propose to reassess the compensation as under:

Sl. No.	Description	Amount	in
Rs.			
1.	Pain and suffering	1,00,000/-	
2.	Medical Expenses	1,20,405/-	
3.	Incidental hospital Expenses	35,000/-	
4.	Loss of future earning capacity (30% of Rs.10,000 x 12 x 17)	6,12,000/-	
5.	Loss of income during laid up period (Rs.10,000 x 12)	1,20,000/-	

6.	Loss of Future amenities	1,00,000/-
7.	Conveyance and attendant Charges	30,000/-
8.	Future medical expenses	50,000/-
Total		Rs.11,67,405/-

The aforesaid compensation shall carry interest at the rate of 6% per annum from the date of filing of the claim petition till realization.

13. In the result, the judgment and award passed by the High Court is modified by enhancing the award of compensation to the appellant herein from Rs.7,37,604/- to Rs.11,67,405/- which shall carry interest at the rate of 6% per annum from the date of filing of claim petition till realization. The amount shall be deposited within a period of six weeks from the date of receipt of certified copy of this judgment. On deposit of the said amount, the Tribunal shall deposit a sum of Rs.3,00,000/- in any nationalized bank for a period of five years. The appellant shall be entitled to draw periodical interest on the said deposit. The balance amount shall be paid to the appellant herein.

14. The appeals are allowed in part in the aforesaid terms.

Parties to bear their respective costs.

.....J [B.R. GAVAI]J [B.V. NAGARATHNA] NEW
DELHI;

18th NOVEMBER, 2022.