

V.

B

DECEMBER 10, 2019

C

D

E

F

G

H

job is not possible, since he would require the assistance of a person to ensure his mobility and manage his discomfort. As a consequence, the functional disability suffered by the Appellant must be assessed as 100%. [Para 11][562 A-B] A

Raj Kumar v. Ajay Kumar and Ors. (2011) 1 SCC 343 : [2010] 13 SCR 179; *K. Janardhan v. United India Insurance Co. Ltd.* (2008) 8 SCC 518 : [2008] 8 SCR 157; *S. Suresh v. Oriental Insurance Co. Ltd. & Anr.* (2010) 13 SCC 777 : [2009] 14 SCR 990 - relied on. B

2. The judgment of the High Court affirmed on assessing the income of the Appellant at Rs. 4,000/- p.m. as per the evidence of his employer. The “functional disability” of the Appellant is assessed as 100%, and the relevant factor would be 201.66 as per Schedule IV to the Workmen’s Compensation Act, 1923. Consequently, the compensation payable to the Appellant would work out to Rs. 4,83,984/- under Section 4 of the Act. [Para 12][562 C-D] C D

3. The Appellant has not been awarded any amount towards reimbursement of the medical expenses incurred by him, either by the Commissioner, or by the High Court. The Appellant underwent hospitalization for a period of 65 days’ for medical treatment and surgical operations. This Court deems it just and appropriate to award a lump sum amount of Rs. 1,00,000/- towards hospitalization and medical expenses incurred by the Appellant. [Paras 13][562 D-E] E

Case Law Reference

[2010] 13 SCR 179	relied on	Para 9	F
[2008] 8 SCR 157	relied on	Para 10	
[2009] 14 SCR 990	relied on	Para 10	

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 9306 of 2019. G

From the Judgment and Order dated 06.10.2016 of the High Court of Karnataka, Dharwad Bench in M.F.A. No. 1569 of 2008 (WC).

H. Chandra Sekhar, Mrs. Rekha Chandra Sekhar, Karri Venkata Reddy, Advs. for the Appellant. H

A Dr. Meera Agarwal, Ramesh Chandra Mishra, Advs. for the Respondent.

The Judgment of the Court was delivered by

INDU MALHOTRA, J.

B 1. Leave granted.

2. The present Civil Appeal has been filed by the Appellant – Claimant for enhancement of the compensation awarded to him by the Karnataka High Court (Dharwad Bench) under the Workmen’s Compensation Act, 1923.

C 3. The Appellant – a driver of heavy vehicles, was employed by one Sekar Santharam. On 13.05.2006, while he was driving a truck bearing No. MH-08H-0390 loaded with sand from Islampura towards Ratnagiri, he lost control of the truck due to an axle cut, and dashed against a rock on the side of the road.

D As a consequence, the truck turtled thrice, and the Appellant suffered grievous injuries all over his body. The truck was insured with the Respondent – Insurance Company.

E 4. The Appellant suffered from serious injuries in his right leg by an Anterior Cruciate Ligament and a Collateral Ligament Tear. Plastic surgery was performed on his right leg. This led to his right leg getting permanently injured, which resulted in complete disability to continue his vocation as a driver of a heavy motor vehicle.

F The Appellant underwent hospitalization for a total period of 65 days, first in Government Hospital, Ratnagiri between 13.05.2006 and 01.06.2006 and thereafter, in KIMS Hospital, Hubli between 17.06.2006 and 26.08.2006.

G 5. The Appellant filed a Claim under the Workmen’s Compensation Act, 1923 (“the Act”) before the Labour Officer and Commissioner for Workmen’s Compensation, Sub-Division 2 – Belgaum (“Commissioner”) against the Truck Owner and the Insurance Company, praying that an amount of Rs. 5,00,000/- be awarded to him as compensation.

H 6. The Truck Owner filed his Written Statement, wherein he admitted the factum of the accident and the injuries suffered by the Appellant. He submitted that he was paying Rs. 4,000/- p.m. and Rs. 30 *batta* per day to the Appellant.

7. Dr. S.D. Patil – a Knee Specialist from Belagavi who had examined the Appellant, deposed that the Appellant can neither stand for a long period of time, nor can he fold his legs. He was required to use a walking stick, and could not lift heavy objects. Dr. Patil opined that the Appellant suffered 37% disability in his whole body, and could not perform the work of a truck driver any longer. A
B

8. The Commissioner assessed the Appellant's income at Rs. 3,000/- p.m., and held that he had lost 50% of his earning capacity. Since the Appellant was 33 years old at the time of the accident, 201.66 was taken as the relevant factor as per Schedule IV to the Act. Accordingly, the compensation was computed at Rs. 1,81,494/-. The Respondent – Insurance Company was held liable to pay the amount awarded. C

9. The Appellant filed MFA No. 1569/2008 before the Karnataka High Court (Dharwad Bench) for enhancement of the compensation awarded by the Commissioner. D

The High Court accepted the income of the Appellant at Rs. 4,000/- p.m. as per the statement made by the employer. Insofar as the functional disability of the Appellant was concerned, the Court held the assessment by the Commissioner at 50% was on the lower side, and increased it to 60%, since the Appellant could no longer earn his livelihood as a driver, and could not even stand for a long time. E

The compensation was accordingly enhanced to Rs. 2,90,390/- with Interest @12% p.a. payable from one month after the date of the accident.

10. Aggrieved, the Appellant has filed the present Civil Appeal before this Court for enhancement of the compensation awarded by the High Court. F

We have heard the learned Counsel appearing for the parties, and perused the pleadings on record. G

It is the admitted position that the Appellant can no longer pursue his vocation as a driver of heavy vehicles. The medical evidence on record has corroborated his inability to stand for a long period of time, or even fold his legs. As a consequence, the Appellant has got permanently incapacitated to pursue his vocation as a driver. H

- A This Court in *Raj Kumar v. Ajay Kumar and Ors.*,¹ held that:
- B “10. 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 ability (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.
- C
- D
- E 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,
- F
- G

H ¹(2011) 1 SCC 343.

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. It may be noted that when compensation is awarded by treating the loss of future earning capacity as 100% (or even anything more than 50%), the need to award compensation separately under the head of loss of amenities or loss of expectation of life may disappear and as a result, only a token or nominal amount may have to be awarded under the head of loss of amenities or loss of expectation of life, as otherwise there may be a duplication in the award of compensation. Be that as it may.”

(emphasis supplied)

11. In *K. Janardhan v. United India Insurance Co. Ltd.*,² this Court examined the loss of earning capacity in the case of a tanker driver who had met with an accident, and lost one of his legs due to amputation. The Commissioner for Workmen’s Compensation assessed the functional disability of the tanker driver as 100% and awarded compensation on that basis. The High Court however, referred to Schedule I to the Workmen’s Compensation Act, 1923, and held that loss of a leg on amputation resulted in only 60% loss of earning capacity. This Court set aside the judgment of the High Court, and held that since the workman could no longer earn his living as a tanker driver due to loss of one leg, the functional disability had to be assessed as 100%.

In *S. Suresh v. Oriental Insurance Co. Ltd. & Anr.*,³ this Court held that :

“8. ... We are of the opinion that on account of amputation of his right leg below knee, he is rendered unfit for the work of a driver, which he was performing at the time of the accident resulting in the said disablement. Therefore, he has lost 100% of his earning capacity as a lorry driver, more so, when he is disqualified from even getting a driving license under the Motor Vehicles Act.”

(emphasis supplied)

² (2008) 8 SCC 518.

³ (2010) 13 SCC 777.

A The aforesaid judgments are instructive for assessing the compensation payable to the Appellant in the present case. As a consequence of the accident, the Appellant has been incapacitated for life, since he can walk only with the help of a walking stick. He has lost the ability to work as a driver, as he would be disqualified from even getting a driving license. The prospect of securing any other manual labour job is not possible, since he would require the assistance of a person to ensure his mobility and manage his discomfort. As a consequence, the functional disability suffered by the Appellant must be assessed as 100%.

B
C 12. We affirm the judgment of the High Court on assessing the income of the Appellant at Rs. 4,000/- p.m. as per the evidence of his employer. The “functional disability” of the Appellant is assessed as 100%, and the relevant factor would be 201.66 as per Schedule IV to the Act. Consequently, the compensation payable to the Appellant would work out to Rs. 4,83,984/- under Section 4 of the Act.

D 13. We find that the Appellant has not been awarded any amount towards reimbursement of the medical expenses incurred by him, either by the Commissioner, or by the High Court. The Appellant underwent hospitalization for a period of 65 days’ for medical treatment and surgical operations.

E We deem it just and appropriate to award a lump sum amount of Rs. 1,00,000/- towards hospitalization and medical expenses incurred by the Appellant.

F 14. The Respondent – Insurance Company is directed to pay the enhanced amount of compensation to the Appellant along-with Interest @6% p.a. to be calculated one month from the date of the accident till the date of payment within 4 weeks.

The Civil Appeal stands allowed in the aforesaid terms. All pending Applications, if any, are accordingly disposed of.

Ordered accordingly.