

V.

(Civil Appeal No. 2551 of 2020)

B

[R. F. NARIMAN, NAVIN SINHA AND B. R. GAVAI, JJ.]

C

D

E

F

G

H

multiplier of 14 at Rs. 6,93,000/-. The High Court also erred in granting a sum of Rs.50,000/- only towards future medical expenses. PW.3 deposed that the appellant would require three more replacements of the artificial left leg during his lifetime. The same is enhanced by Rs.2,50,000/- in addition to that granted by the High Court. The compensation granted towards loss of amenities is also enhanced to Rs.50,000/- considering that the appellant was deprived of social mixing as deposed by PW.3. The modified award of the High Court is accordingly to be paid along with interest @ 6 per cent from the date of petition till the realization. [Paras 12, 14][863-D-H; 866-G; 867-B-C]

Raj Kumar v. Ajay Kumar and Another (2011) 1 SCC 343 : [2010] 13 SCR 179; Nagarajappa v. Divisional Manager, Oriental Insurance Company Limited, (2011) 13 SCC 323 : [2011] 6 SCR 70 – relied on.

Case Law Reference

[2010] 13 SCR 179	relied on	Para 10
[2011] 6 SCR 70	relied on	Para 11

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2551 of 2020.

From the Judgment and Order dated 19.07.2016 of the High Court of Karnataka at Bengaluru in MFA No. 843 of 2012 (MV).

Ashwin Kotemath, Mrs. S. Usha Reddy, S. N. Bhat, Advs. for the appearing parties.

The Judgment of the Court was delivered by
NAVIN SINHA, J.

1. Leave granted.

2. The appellant is in appeal aggrieved by the order of the High Court, claiming inadequacy of compensation granted to him in a motor accident case.

3. The appellant was travelling in a bus of the respondent Corporation and met with an accident on 19.02.2010, due to rash and negligent driving of the bus driver who hit a lorry from behind. As a consequence of the injuries suffered, the left leg of the appellant had to be amputated. The Tribunal awarded a compensation of Rs.4,08,850/-.

- A The High Court in appeal enhanced the same to Rs.5,10,350/-. The appeal preferred by the respondent Corporation was dismissed.

4. Shri Ashwin Kotemath, learned counsel for the appellant submitted that the compensation enhanced by the High Court is niggardly and grossly inadequate considering the nature of injuries suffered. The appellant was a painter by vocation. He had a daily income of Rs.300/- cumulated at Rs.9,000/- per month, supported by the evidence of his employer PW.2, which has been wrongly rejected. The permanent disability of the appellant contrary to the evidence of PW.3, Dr. S. Ramachandra the treating Doctor, has been wrongly fixed at 25% of the whole body without any reasoning to support the same, in the nature of the injury, suffering, future medical treatment and loss of future income caused to the appellant.

5. Shri S.N. Bhat, learned counsel for the respondent, submitted that the High Court has reasonably enhanced the compensation and it calls for no interference. The appellant had failed to substantiate the claimed income with substantive evidence. The extent of disability suffered has been adequately assessed. The evidence of the employer and the treating doctor have all been considered adequately.

6. We have considered the submissions on behalf of the parties. The appellant was initially taken to the government hospital on the date of the accident but was shifted to a private hospital on 25.02.2010 where he remained as an inpatient till 16.09.2010 and also underwent surgery requiring amputation of his left leg from above the knee. PW.3, the treating doctor, deposed that the appellant had suffered Type III 'B' commuted fracture of Tibia and Fibula of the left leg with an active infection of Chronic Osteomyelitis emanating foul smell which prevented him from mixing and socialising in public. There was no alternative to amputation and fixation of an artificial leg. The physical disability suffered by the appellant of the left lower limb was assessed at 75% which was about 37.5% of the whole body. PW.3 further opined that the appellant had suffered shortening of the left lower limb by 3 cms. He could not stand independently or walk without aid of a walker or attendant. The appellant cannot sit cross legged, squat or use an Indian toilet. He could not climb up and down a staircase. The appellant was incapable of any manual work including painting. The appellant who was 45 years of age, considering average life expectancy of 65 years would require at least

H

three further replacements of the artificial limb in his lifetime, the cost of which was assessed at approximately between Rs.75,000 to Rs.1,50,000/-.

A

7. The High Court enhanced the monthly income of the appellant to Rs.5,500/-. He has been awarded a sum of Rs.1,00,000/- towards pain and suffering and Rs.7,350/- towards medical expenses along with Rs.21,000/- for attendant charges. The loss of earnings during the period of treatment has been enhanced by the High Court to Rs.66,000/-. Conveyance charges have been paid at Rs.10,000/-. We find no reason to interfere to the aforesaid extent.

B

8. The physical disability of the appellant without any reasoning has been assessed at 25% of the whole body with which we are unable to concur. The compensation granted towards loss of future earning on account of disability at Rs.2,31,000/- is considered grossly inadequate in the facts and circumstances of the case, as also the compensation of Rs.50,000/- towards future medical expenses and only Rs.25,000/- towards loss of amenities.

C

D

9. PW.3 had assessed the physical functional disability of the left leg of the appellant at 75% and total body disability at 37.5%. The High Court has considered it proper to assess the physical disability at 25% of the whole body only. There is no discussion for this reduction in percentage, much less any consideration of the nature of permanent functional disability suffered by the appellant. The extent of physical functional disability, in the facts of the case has to be considered in a manner so as to grant just and proper compensation to the appellant towards loss of future earning. The earning capacity of the appellant as on the date of the accident stands completely negated and not reduced. He has been rendered permanently incapable of working as a painter or do any manual work. Compensation for loss of future earning therefore has to be proper and just to enable him to live a life of dignity and not compensation which is elusive. If the 75% physical disability has rendered the appellant permanently disabled from pursuing his normal vocation or any similar work, it is difficult to comprehend the grant of compensation to him in ratio to the disability to the whole body. The appellant is therefore held entitled to compensation for loss of future earning based on his 75% permanent physical functional disability recalculated with the salary of Rs.5,500/-with multiplier of 14 at Rs. 6,93,000/-.

E

F

G

H

A 10. *Raj Kumar vs. Ajay Kumar and another*, 2011 (1) SCC 343 lucidly sets out the principles for grant of compensation in cases of permanent physical functional disability as follows:

B “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.

E 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.* and *Yadava Kumar v. National Insurance Co. Ltd.*)

XXXX

XXXX

XXXX

H

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.

A

B

C

D

14. 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 per cent, 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 be found suitable for discharging the duties attached to the post or job which he was earlier holding, on account of his disability, 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.

E

F

G

H

A 11. In *Nagarajappa vs. Divisional Manager, Oriental Insurance Company Limited*, 2011 (13) SCC 323, the physical disability of the upper limb was determined as 68% in proportion to 22-23% of the whole-body. This court opined as follows:

B “9. On perusal of the doctor’s evidence with respect to the nature of injuries suffered by the appellant, the appellant was found, inter alia, to be suffering from the following disabilities as a result of the accident—”gross deformity of the left forearm, wrist and hand, wasting and weakness of the muscles of the left upper limb and shortening of the left upper limb by 1 cm”. As a result, the doctor stated that the appellant could not work as a coolie and could not also do any other manual work. The doctor assessed permanent residual physical disability of the upper limb at 68% and 22-23% of the whole body.

C 10. The appellant is working as a manual labourer, for which he requires the use of both his hands. The fact that the accident has left him with one useless hand will severely affect his ability to perform his work as a coolie or any other manual work, and this has also been certified by the doctor. Thus, while awarding compensation it has to be kept in mind that the appellant is to do manual work for the rest of his life without full use of his left hand, and this is bound to affect the quality of his work and also his ability to find work considering his disability. Hence, while computing loss of future income, disability should be taken to be 68% and not 20%, as was done by the Tribunal and the High Court. Our view is supported by the ratio in *Raj Kumar* and from the fact that the appellant is severely hampered and perhaps forever handicapped from performing his occupation as a coolie.”

D 12. The High Court also erred in granting a sum of Rs.50,000/- only towards future medical expenses. PW.3 deposed that the appellant would require three more replacements of the artificial left leg during his lifetime. We consider it proper to enhance the same by Rs.2,50,000/- in addition to that granted by the High Court. The compensation granted towards loss of amenities is also enhanced to Rs.50,000/- considering that the appellant was deprived of social mixing as deposed by PW.3.

E 13. Thus, the compensation awarded by the High Court is modified and recalculated as under:

F H

SRI ANTHONY ALIAS ANTHONY SWAMY v.
THE MANAGING DIRECTOR, K.S.R.T.C. [NAVIN SINHA, J.]

867

Sr. No.	Particulars	Amount (in Rs.)
1.	Pain and sufferings	1,00,000
2.	Medical expenses	7,350
3.	Attendant charges	21,000
4.	Loss of earnings during the period of treatment	66,000
5.	Conveyance charges	10,000
6.	Loss of future earnings on account of disability	6,93,000
7.	Future medical expenses	2,50,000
8.	Loss of amenities	50,000
	TOTAL	11,97,350

A

B

14. We modify the award of the High Court accordingly to be paid along with interest @ 6 per cent from the date of petition till the realization.

C

15. The appeal is allowed.

Divya Pandey

Appeal allowed.