

Neerupam Mohan Mathur vs New India Assurance Co on 1 July, 2013

Equivalent citations: AIR 2013 SUPREME COURT 3378, 2013 (14) SCC 15, 2013 AIR SCW 4820, 2013 AAC 2776 (SC), 2013 (8) SCALE 360, (2013) 5 ALLMR 441 (SC), (2013) 128 ALLINDCAS 133 (SC), 2013 (5) ALLMR 441, (2013) 4 JCR 85 (SC), AIR 2013 SC (CIVIL) 2389, (2013) 2 WLC(SC)CVL 249, (2013) 3 ACC 1, (2013) 3 ACJ 2122, (2013) 4 PUN LR 238, (2013) 3 RAJ LW 2350, (2013) 3 TAC 385, (2013) 4 RECCIVR 268, (2013) 8 SCALE 360, (2013) 4 ALL WC 4252, (2013) 3 CURCC 81, (2013) 4 BOM CR 509

Bench: Sudhansu Jyoti Mukhopadhyaya, G.S. Singhvi

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 4814 OF 2013
(arising out of SLP(C)No.6282 of 2011)

NEERUPAM MOHAN MATHUR

... APPELLANT

VERSUS

NEW INDIA ASSURANCE CO.

...RESPONDENT

J U D G M E N T

SUDHANSU JYOTI MUKHOPADHAYA, J.

Leave granted.

2. The present appeal is filed by the claimant-appellant against the judgment of Punjab and Haryana High Court at Chandigarh in FAO No.693 of 1989, whereby the High Court granted a meager enhancement in the amount of compensation awarded to him by the Motor Accident Claims Tribunal (hereinafter referred to as 'the Tribunal').

3. The facts involved in the present case are as follows:

The claimant was employed as a 'Product Design Engineer' in M/s. Utility Engineers (India) Ltd. Dharuhera, District Mohindergarh, Haryana. The employer had arranged for a Chartered Bus belonging to M/s. National Tours & Travels, F-4, East of Kailash, New Delhi, 2nd respondent before the Tribunal for carrying the employees to the factory at Dharuhera and back; one Pritam Singh, 1st respondent before the Tribunal was the driver of the said bus. On 2nd September, 1987, the claimant along with his

colleagues was coming back from Dharuhera in the said Chartered Bus bearing Registration No.DBP-805. At about 6 p.m. when the said Bus reached near the turning of village Shikohpur on Gurgaon-Jaipur Highway, it came across a truck coming from opposite direction which was crossing a camel cart in front of it. Pritam Singh, who was driving the bus at a very high speed, carelessly, rashly and negligently attempted to cross the above said truck without keeping the Bus to the extreme left hand side. This resulted in a collision of right hand side of the bus with the truck, which resulted in severance of right hand of the claimant who was sitting in the right side of the bus. The said accident and the mishappenings thereto were witnessed by the occupants of the bus. One Anil Kumar, PW-3, who was also travelling in the said Chartered Bus at the time of the said accident, took the claimant to the Civil Hospital, Gurgaon from where he was given medical first-aid and he was referred to Safdarjang Hospital, New Delhi. The claimant was later on transferred to 'Dr. Ram Manohar Lohia Hospital', New Delhi and thereafter he was also treated in different Hospitals at various stages. The matter was also reported to the Police by Anil Kumar, PW-3.

4. The claimant filed a petition under Section 110-A of the Motor Vehicles Act, 1988 claiming Rs.12 lacs as the compensation for the loss of the right hand which was amputated near the shoulder, on various counts.

5. The respondents contested the claim of the claimant. The Tribunal after perusing oral and documentary evidence held that the accident took place due to rash and negligent driving by Driver, Pritam Singh of Bus No.DBP-805. The Issue No.1 was thus decided in favour of the claimant. While assessing the compensation under Issue No.2, the Tribunal awarded a compensation of Rs.3,20,000/- with interest at the rate of 12% per annum.

6. In the appeal preferred by the claimant the High Court taken a loss of earning capacity to 70% in view of permanent disability of right hand. Based on salary of Rs.3,000/- per month as claimed by the claimant adding 50% on the same for future prospects of increase and applying multiplier of 16, compensation amount was raised to Rs.4,500/- with interest at 6% from the date of petition. The High Court made the following observation while granting compensation against different heads:

“4. In my view, the issue relating to death or injury would have no serious difference in the choice of multiplicand or the multiplier. If at all, case of injury that completely disables a person for life is more poignant than a case of death and that is why Courts do not always provide for deductions for personal expenses in case claims for injuries. Indeed, the deduction itself will be meaningless for unlike a case of death, we need to make provision for his own living as well as the living of persons, who are dependent on injured person. The loss in case of injury where there is an amputation and there is a high percentage of loss of earning capacity, in my view, the principle laid down in Sarla Verma providing for a prospect of future increase in salary cannot be ruled out. I would, therefore, take the multiplicand to be Rs.4,500/- which is the salary of Rs.3,000/- per month plus 50% of the same for future prospects of increase. For a person, who was aged 32 years, the appropriate multiplier ought to have been

16 and not 15 and I would, therefore, take the annual income to be Rs.54,000/- and adopting a multiplier of 16, I would take the income to be Rs.8,64,000/-. Having regard to the fact that I have taken the loss of earning capacity to be 70%, the amount that would bear to 70% of Rs.8,64,000/- is the amount that shall become payable for loss of earning capacity. The loss of income will be Rs.6,04,800/- . I shall retain the medical expenses of Rs.10,000/-, Rs.15,000/- for attendant's charges and Rs.25,000/- as provided for pain and suffering by the Tribunal. If the same are retained, the amounts will add to Rs.6,54,800/-. The learned counsel would contend that although there was evidence placed before the Tribunal that the cost of prosthesis was Rs.75,000/-, no amount had been granted towards the same. The learned counsel would also state across the bar that the present cost is Rs.1,60,000/-. There is no definite evidence on the same and I would take the cost to be Rs.50,000/- which although the Tribunal did not provide for. I would provide as necessary equipment that he may require for fending himself. The learned counsel states that if the prosthesis were to be fixed, the disability would even be less. In my view, it will make a minimal difference for a prosthesis is more for cosmetic value than a major functional adjunct. Sense of touch, ability to pinch, ability to push, ability to pick up, are all factors which go into the making of disability, all of which do not get improved by a prosthesis. All told, the amount that shall become payable in the manner worked out by me would add to Rs.7,04,800/-. The Tribunal has already awarded Rs.3,20,000/- and the amount in excess of what is awarded by the Tribunal shall be paid by the insurer with interest at 6% from the date of the petition till the date of realization.”

7. The claimant has challenged the order passed by the High Court on three counts namely:

(i) The permanent disability has been wrongly assessed at 70% which should have been 100% in the case of the claimant.

(ii) The lower amount has been paid towards cost of prosthesis and

(iii) Lesser amounts have been allowed towards pecuniary and non-

pecuniary damages.

8. Per contra according to the learned counsel for the Insurer, the High Court allowed higher amount than the amount of compensation to which claimant was entitled.

9. In the case of claimant, the High Court for determining the earning capacity adopted the percentage of loss of earning capacity as per the Workmen's Compensation Act and has taken a loss of earning capacity to 70% for amputation of arm above elbow.

10. Admittedly, claimant is a graduate in Science from Agra University and Post Graduate Diploma holder in Mechanical Engineering with specialization in Refrigeration and Air-conditioning. He was

a young man of 32 years at the time of accident. Before the Tribunal, the claimant appeared as PW-4 and stated that he had worked with many companies like Blue Star, etc. and has extensive experience. Ultimately he joined M/s. Utility Engineers (India) Ltd. on 1st September, 1986 as Product and Development Engineer and was promoted from Middle Management Group to Senior Management Group on the basic pay of Rs.1400/- to Rs.1500/- plus other incidental benefits like special increment of Rs.100. At the time of accident, he was drawing basic pay of Rs.1900/- plus other incidental benefits total amounting to about Rs.3,000/- per month. His job was designing of air-conditioning project.

11. According to claimant the normal expectancy of life is 70 years and he was expected to earn up to the said age as a specialist in designing, refrigeration and air conditioning. After loss of the right arm due to accident he has become 100% disabled as his earning capacity has gone down to zero in doing the specialized work like designing, refrigeration and air conditioning. The accident has completely jeopardized his mastery on the subject and his chances of future promotion and professional engagements have been virtually vanished.

12. The question regarding “Assessment of future loss of earnings due to permanent disability” was considered by this Court in Raj Kumar vs. Ajay Kumar and Another, (2011) 1 SCC 343, wherein this Court held as follows:

“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.*

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

13. In the present case, the percentage of permanent disability has not been expressed by the Doctors with reference to the full body or with reference to a particular limb. However, it is not in dispute that the claimant suffered such a permanent disability as a result of injuries that he is not in a position in doing the specialized job of designing, refrigeration and air conditioning. For the said reason, claimant's services were terminated by his employer but that does not mean that the

claimant is not capable to do any other job including the desk job. Having qualification of B.SC degree and Post Diploma in Mechanical Engineering he can perform any job where application of mind is required than any physical work.

14. In view of the forgoing discussion we find no grounds made out to interfere with the finding of the High Court which determined the percentage of loss of earning capacity to 70% adopting the percentage of loss of earning capacity as per the Workmen's Compensation Act. The total loss of income thus rightly calculated by the High Court at Rs.6,04,800/-.

15. However from the award passed by the Tribunal and judgment rendered by the High Court, we find no ground shown by the Tribunal or the High Court in providing pecuniary and non-pecuniary damages at a lower rate. Against some of the heads even no amount has been allowed.

16. The Tribunal in its award has noticed that the claimant had to go to Hospital every 10 days for treatment. He was admitted in different Hospitals and was under treatment as indoor patient for about one and a half months. Claimant's hand was amputated and skin was grafted. In spite of the same, no amount has been allowed towards loss of earning during the period of treatment nor any amount allowed towards future medical expenses.

17. From the High Court's judgment and award passed by the Tribunal it is clear that the claimant placed evidence to suggest that the cost of prosthesis was Rs.75,000/- . It was accepted at Bar that the cost of prosthesis was Rs.1,60,000/-. In spite of the same the Tribunal did not chose to allow any amount towards prosthesis and the High Court allowed a petty amount of Rs.50,000/- for the same. No separate amount has been allowed towards travelling to the Hospitals though the claimant was required to go to attend the Hospital every 10 days for treatment. We further find that a meager sum of Rs.25,000/- has been allowed by the High Court towards pain and suffering.

18. Having regards to the fact that the Tribunal and the High Court have not allowed reasonable amount for different pecuniary and the non-pecuniary damages, we, therefore, with a view to do complete justice to the claimant re-determined the amount of compensation on the following terms:

Pecuniary damages (Special damages) | (i) | Expenses relating to | | |
 | treatment, hospitalisation, medicine | | | s, transportation, nourishing food, | | | and
 miscellaneous expenditure. | Rs.1,05,000 | | (medical expenses Rs.15,000 + | | |
 | Attendant Rs.15,000 + cost of | | | | prosthesis Rs.75,000) | | (ii) | Loss of earnings
 (and other gains) | | | | which the injured would have made | | | | had he not been
 injured, | | | | comprising: | Rs.4,500 | | (a) Loss of earning during the | | | | period of
 treatment; | Rs.6,04,800 | | (b) Loss of future earnings (on | | | | account of 70%
 permanent | | | | disability taking multiplier of | | | | 16) | | (iii) | Future medical
 expenses. | Rs.50,000 | |) | | | Non-pecuniary damages (General damages)
 | (iv) | Damages for pain, suffering and | Rs.1,00,000 | | | trauma as a consequence of
 the | | | | injuries. | | | (v) | Loss of amenities | Rs.2,00,000 | | (vi) | Loss of expectation
 of life | Rs.1,00,000 | | | (shortening of normal longevity) | | Total Rs.11,64,300

19. The respondent Insurance Company is directed to pay the claimant- appellant a sum of Rs.11,64,300/- minus the amount already paid pursuant to the order passed by the Tribunal within three months from the date of judgment with interest @ 12%. The order passed by the High Court and Tribunal stands modified to the extent above. The appeal filed by the claimant is allowed with the above observation and direction. No separate order as to costs.

.....J. (G.S. SINGHVI)J.
(SUDHANSU JYOTI MUKHOPADHAYA) NEW DELHI, July 1, 2013.