

**Aabid Khan
v.
Dinesh and Others**

(Civil Appeal No. 4828 of 2024)

09 April 2024

[Sanjay Karol and Aravind Kumar,* JJ.]

Issue for Consideration

Matter pertains to entitlement of the claimant for enhanced compensation.

Headnotes

Motor Vehicles Act, 1986 – Compensation – Enhancement – Road accident resulting in injuries to the claimant, a self-employed mechanic with 30 years work experience – Doctors report that claimant suffered whole body disability to the extent of 17% – Tribunal computed the compensation towards loss of future income as Rs.87,700/- with interest @ 7% p.a. reducing the whole body disability at 10% on surmises and conjectures – High Court enhanced the compensation awarded to Rs.1,27,700/- with same interest – Correctness:

Held: Tribunal and the High Court committed a serious error in not accepting the medical evidence tendered by the claimant and in the absence of any contra evidence available on record, neither the tribunal nor the High Court could have substituted the disability to 10% as against the opinion of the doctor certified at 17% – Compensation awarded under the head ‘loss of income’ towards permanent disability to be enhanced by construing the whole body disability at 17% – Compensation enhanced to Rs. Rs. 2,42,120/- – Insurance Company to pay the balance amount of compensation with interest @ 7% p.a. [Paras 10-14]

Case Law Cited

Raj Kumar v. Ajay Kumar and Another [2010] 13 SCR 179 : (2011) 1 SCC 343; Laxman Alias Laxman Mourya v. Divisional Manager, Oriental Insurance Co. Ltd. and Another (2011) 10 SCC 756; Sidram v. Divisional Manager, United India Insurance Co. Ltd. and Another [2022] 8 SCR 403 : (2023) 3 SCC 439 – referred to.

Aabid Khan v. Dinesh and Others**List of Keywords**

Compensation; Whole body disability; Loss of future income; Loss of income' towards permanent disability.

Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 4828 of 2024

From the Judgment and Order dated 21.01.2019 of the High Court of M.P at Indore in MA No. 1614 of 2018

Appearances for Parties

Nitin S. Tambwekar, Seshatalpa Sai Bandaru, Advs. for the Appellant.

Ambhoj Kumar Sinha, Priyadarshi Kumar, Ms. Stuti Jha, Advs. for the Respondents.

Judgment / Order of the Supreme Court**Judgment****Aravind Kumar, J.**

1. Leave granted.
2. We have heard learned advocates appearing for the parties and perused the records.
3. Challenge is laid in this appeal to the order dated 21.01.2019 passed in MA No.1614 of 2018 by the High Court of Madhya Pradesh, Bench at Indore whereunder the compensation awarded by the Motor Accidents Claims Tribunal (hereinafter referred to as 'tribunal') by award dated 04.12.2017 in a sum of Rs.87,700/- with interest @ 7% p.a. came to be enhanced to Rs.1,27,700/- with same interest contending inter-alia that compensation so awarded by the High Court is on the lower side and same has to be enhanced.
4. The occurrence of the accident, injuries sustained by the appellant/ claimant in the road accident that took place on 23.04.2013, consequential disability sustained, issuance of insurance policy to the offending vehicle and policy being in force on the date of accident are all undisputed facts. Hence, we do not propose to dwell into those aspects.
5. The only question that would arise for our consideration is:

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“Whether the appellant/claimant is entitled for enhancement of compensation as urged? And if so, to what amount?”

6. Perusal of the award passed by the tribunal as modified by the High Court, would reveal that claimant had sustained compound fracture in the left acetabulum and left rib. Dr. Alok Mehta (PW-5), who had examined the claimant had deposed that whole body disability suffered by the claimant was to the extent of 17% and this fact has been elicited in the cross-examination. However, the tribunal computed the compensation towards loss of future income by considering the whole body disability at 10%. On surmises and conjectures the percentage of disability has been reduced. No reason whatsoever has been assigned by the tribunal for substituting its opinion to that of the expert opinion namely, the doctor who treated the claimant and examined as PW-5.
7. This Court in the case of *Raj Kumar v. Ajay Kumar and Another*, (2011) 1 SCC 343 has observed:

“16. The Tribunal should not be a silent spectator when medical evidence is tendered in regard to the injuries and their effect, in particular, the extent of permanent disability. Sections 168 and 169 of the Act make it evident that the Tribunal does not function as a neutral umpire as in a civil suit, but as an active explorer and seeker of truth who is required to “hold an enquiry into the claim” for determining the “just compensation”. The Tribunal should therefore take an active role to ascertain the true and correct position so that it can assess the “just compensation”. While dealing with personal injury cases, the Tribunal should preferably equip itself with a medical dictionary and a handbook for evaluation of permanent physical impairment (for example, Manual for Evaluation of Permanent Physical Impairment for Orthopaedic Surgeons, prepared by American Academy of Orthopaedic Surgeons or its Indian equivalent or other authorised texts) for understanding the medical evidence and assessing the physical and functional disability. The Tribunal may also keep in view the First Schedule to the Workmen’s Compensation Act, 1923 which gives some indication about the extent of permanent disability in different types of injuries, in the case of workmen.”

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8. In the case of **Laxman Alias Laxman Mourya v. Divisional Manager, Oriental Insurance Co. Ltd. and Another**, (2011) 10 SCC 756, this Court observed:

“15. 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 and trauma caused due to the accident, loss of earning and the 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.”

9. Further, in the matter of **Sidram v. Divisional Manager, United India Insurance Co. Ltd. and Another**. [(2023) 3 SCC 439] it was observed by this Court:

*“113. Before we close this matter, it needs to be underlined, as observed in Pappu Deo Yadav (*supra*) that Courts should be mindful that a serious injury not only permanently imposes physical limitations and disabilities but too often inflicts deep mental and emotional scars upon the victim. The attendant trauma of the victim’s having to live in a world entirely different from the one she or he is born into, as an invalid, and with degrees of dependence on others, robbed of complete personal choice or autonomy, should forever be in the judge’s mind, whenever tasked to adjudge compensation claims. Severe limitations inflicted due to such injuries undermine the dignity (which is now recognized as an intrinsic component of the right to life Under Article 21) of the individual, thus depriving the person of the essence of the right to a wholesome life which she or he had lived, hitherto. From the world of the able bodied, the victim is thrust into the world of the disabled, itself most discomfiting and unsettling. If courts nit-pick and award niggardly amounts oblivious of these circumstances there is resultant affront to the injured victim. [See: Pappu Deo Yadav (*supra*)]”*

10. In the light of the afore-stated position of law explained when the medical evidence tendered by the claimant is perused, we are of the considered view that tribunal and the High Court committed a

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serious error in not accepting the said medical evidence and in the absence of any contra evidence available on record, neither the tribunal nor the High Court could have substituted the disability to 10% as against the opinion of the doctor (PW-5) certified at 17%. In that view of the matter the compensation awarded under the head 'loss of income' towards permanent disability deserves to be enhanced by construing the whole body disability at 17%.

11. The monthly income of the claimant has been construed as Rs.3,500/- which is on the lower side particularly in the background of the fact that the accident in question having occurred on 23.04.2013 and the evidence on record disclosing that claimant was self-employed as a mechanic and had work experience of over 30 years. Resultantly his income has to be construed at Rs.6,500/- per month in substitution to Rs.3,500/- computed by the Tribunal and the High Court. Thus, the claimant/appellant would be entitled for enhanced compensation of Rs.92,820/- (Rs.6,500 X 12 X 7 X 17%) towards loss of future income.
12. We are also of the considered view that compensation awarded by the Tribunal under the heads of Attendant charges, pain and suffering, transportation together in a sum of Rs.9,000 being abysmally on the lower side and same deserves to be enhanced and accordingly a lump sum compensation of Rs.1,00,000/- is awarded under these three (3) heads.
13. In **substitution** to the award of Rs.1,27,700/- awarded by the High Court we enhance the compensation as under:

Sr. No.	Particular	Amount
1.	Loss of future income due to permanent disability	Rs.92,820/-
2.	Medical expenses	Rs.49,300/-
3.	– Transportation, – Attendant Charges, – Pain and Suffering	Rs.1,00,000/-
Total		Rs.2,42,120/-

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14. We direct the Respondent No.3-Insurance Company to pay the balance amount of compensation with interest @ 7% P.A. as awarded by the Tribunal by depositing the same before the jurisdictional tribunal within 6 weeks from the date of this order.
15. In the result, the appeal is allowed as aforesaid with no order as to costs.

Headnotes prepared by: Nidhi Jain

Result of the case:

Appeal allowed.