

**SUPREME COURT OF INDIA**

Rajesh Kumar @ Raju

Vs.

Yudhvir Singh

C.A.No....of 2008

(S.B. Sinha and Lokeshwar Singh Panta JJ.)

13.05.2008

**JUDGMENT**

**S.B. Sinha, J.**

1. Leave granted.

2. Claimant before the Motor Accident Claims Tribunal is the appellant before us. On 11.8.2001, he was driving a two wheeler vehicle being a scooter. It was hit by a bus bearing Registration No.DL-1P-A- 0746. He was a motor mechanic.

“In July 2003, he filed a claim in terms of Section 166 of the Motor Vehicles Act, 1988 (for short, `the Act') claiming a sum of Rs.10, 00,000/- along with interest at the rate of 18% per annum. Allegedly, he suffered 60% total disability. His claim was based on the premise that he was earning a sum of Rs.4, 500/- per month.”

3. Before the Tribunal, the appellant relied upon a certificate purported to have been issued by the Civil Surgeon, Faridabad on 11.11.2003 stating that he had suffered 60% disability. The learned Motor Vehicle Accident Claims Tribunal awarded a sum of Rs.1, 68,941 by way of compensation opining that his income was Rs.3,000/- per month and he was entitled to compensation upon taking 30% of his income at the rate of Rs.900/- per month being a total sum of Rs.20,000 besides the amount of compensation towards pain and sufferings and a sum of Rs.5,000/- as general damages including conveyance, special diet etc. An interest at the rate of 7% per annum was also awarded.

4. He preferred an appeal thereagainst. The High Court awarded a further sum of Rs.84, 800/-, opining:

"Minimum wages notified on 1.1.1980 for skilled workers was Rs.320/- per month. It rose to Rs.1043/- as on 1.1.1990. It rose to Rs.3, 016/- as on 1.1.2001. The trend shows that minimum wages double every 10 years. Considering the age of the deceased being 34 years, it would be safe to assume that by the time he would turn 60, his income would have doubled. I accordingly treat the average monthly income

of the deceased at Rs.4, 500/-. Applying the disability certificate, Ex.PW 2/2, being 30% disability, loss on account of disability comes to Rs.1350/- per month. Since multiplier adopted by the tribunal is 12 and the Respondents have raised no objection thereto, loss of future income comes to Rs. 1350/- x 12 x 12 = 1, 94,400/-."

It was further observed:

"Damages on account of compensation for loss of amenities of life, hardship and discomfort including frustration and stress under general damages awarded in sum of Rs.5, 000/- is inadequate. I increase the same to Rs.25, 000/-."

5. Mr. Gaurav Goel, learned counsel appearing on behalf of the appellant, would submit that having regard to the provisions contained in Section 163A of the Motor Vehicles Act, for the purpose of awarding compensation on disability, the provisions of the *Workmen's Compensation Act, 1923* would be attracted. According to him, in view of the fact that there is no dispute in regard to the genuineness of the said disability certificate, the High Court committed a serious error in assessing the total disability at 30% only. It was pointed out that the appellant was an indoor patient in the Lady Harding Hospital for a month. The injury suffered by him was considered to be a grievous one and allegedly one-third of his lower limb had been amputated. In view of the fact that no evidence, contrary thereto, has been produced by the respondents, it was urged that the learned Tribunal as also the High Court committed a serious illegality in arriving at the aforementioned finding.

6. Learned counsel appearing on behalf of the respondent-insurance company, however, supported the impugned judgment.

7. The claim petition was filed under Section 166 of the Act and not under Section 163A thereof. It was contended by the claimant-appellant that the driver of the bus in question was rash and negligent as a result whereof, the accident took place. By reason of Section 167 of the Act, an injured person had the option either to file a claim under the Motor Vehicles Act or the Workmen's Compensation Act, if both the Acts apply. It is, therefore, a case where the claimant could have filed at his option an application under the Workmen's Compensation Act.

"Section 163A provides for filing of a claim petition where an accident took place by reason of use of the motor vehicle. It is not necessary to prove any fault on the part of the driver or the vehicle. The Tribunal in a proceeding arising under Section 166 of the Act is required to hold a full fledged trial. It is required to collect datas on the basis whereof, the amount of compensation can be determined. Under Section 163A of the Act, however, the question of liability and extent of proof thereof are not justiciable. The Tribunal can determine the amount on the basis of the basic datas provided therefor.

Explanation appended to Section 163A of the Act, reads, thus:

Explanation.--For the purposes of this sub- section, `permanent disability' shall have the same meaning and extent as in the *Workmen's Compensation Act, 1923.*"

8. The reference to Workmen's Compensation Act by incorporation was only for the purpose of sub-section (1) of Section 163A. It was not meant to apply in a case falling under Section 166 of the Act. Had the provisions of the Workmen's Compensation Act were applicable, the procedure laid down therein would also apply. For the purpose of the definition of total disablement as also person who can grant a certificate therefor, namely, a qualified medical practitioner, Section 2(e) and 2(i) would be attracted. In terms of the 1923 Act, the amount of compensation is required to be determined as specified in Section 4. The Rules made in terms of Section 32 of the Act known as Workmen's Compensation Rules 1924, would also be applicable.

9. The certificate in question in this case was obtained after two years. It is not known as to whether the Civil Surgeon of the hospital treated the appellant. On what basis, such a certificate was issued two years after the accident took place is not known. The author of the said certificate had not been examined. Unless the author of the certificate examined himself, it was not admissible in evidence. Whether the disability at 60% was calculated on the basis of the provisions of the Workmen's Compensation Act or otherwise is not known. It is also not known as to whether he was competent to issue such a certificate. It even does not appear that the contentions raised before us had either been raised before the Tribunal or the High Court. The Tribunal as also the High Court, therefore, proceeded on the materials brought on record by the parties. In absence of any contention having been raised in regard to the applicability of the Workmen's Compensation Act which, in our opinion, ex facie has no application, the same, in our opinion, cannot be permitted to be raised for the first time.

10. We are of the opinion, that it is not a case where we should interfere in the impugned judgment of the High Court as also the award of the Tribunal. The appeal is dismissed with no order as to costs.