

SUPREME COURT OF INDIA

Mohan Soni

Vs.

Ram Avtar Tomar

C.A.No.237 of 2012

(Aftab Alam and R.M. Lodha JJ.)

10.01.2012

JUDGMENT

AFTAB ALAM, J.

1. Leave granted.

2. The appellant, victim of a motor vehicle accident has come to this Court making grievance about the low amount of compensation awarded to him by the Tribunal and the High Court.

3. The appellant used to earn his livelihood as a cart puller. On December 17, 2003, at about 3.00 P.M. he was carrying some goods on a four-wheel cart when he was hit by a tanker which was being driven in a rash and negligent manner. In the accident, the left leg of the appellant was crushed. The X-Ray report showed multiple fractures in the left leg. He was admitted to a hospital where he had to undergo two surgeries between December 17, 2003 and January 3, 2004 and in the end his left leg was amputated below the knee. He filed an application (Claim Case No.16/2004) before the Second Additional Motor Accident Claims Tribunal, Gwalior, (M.P.), claiming compensation for the injuries suffered by him under section 166 of the Motor Vehicles Act, 1988. It was stated by him before the Tribunal that at the time of accident his age was 50 years and his monthly income, as a cart puller, was Rs.3,300/-. As a result of the amputation of his leg, he was no longer in a position to walk without support and he was, therefore, rendered incapable of doing any work and to earn his livelihood.

4. The Tribunal found and held that the accident took place as a result of the negligent and rash driving by the tanker driver. It further held that at the time of the accident the age of the appellant was 55 years and his monthly income was Rs.2,400/- and not Rs.3,300/- as claimed by him. Coming to the extent of disability, the Tribunal referred to the disabled-person identity card given to the appellant (Exhibit P.27) in which his disability was shown as 60%. The Tribunal also observed that when the claimant appeared in court, it was evident that his left leg was amputated below the knee. Though the appellant's disabled-person card showed his disability as 60%, the Tribunal, with reference to Schedule 1 of the Workmen's Compensation Act, 1923, held that the appellant's disability could not be reckoned above 50%.

5. Having held that that the appellant's age at the time of the accident was 55 years, the Tribunal applied the multiplier of 11 and on the basis of the findings that the appellant's monthly income was Rs.2,400/- and the extent of his disability was 50%, fixed the amount of Rs.1,58,400/- as compensation for loss of future earnings. In addition to this, the Tribunal gave to the appellant Rs.30,000/- for mental and physical agony due to permanent disability and a further sum of Rs.15,000/- for medical expenses and special diet. Accordingly, the Tribunal, by its award dated July 31, 2004 held the appellant entitled to receive a total sum of Rs.2,03,400/- as compensation along with interest at the rate of 9% per annum from the date of filing of the claim petition on January 9, 2004 till the date of payment.

6. Against the award of the Tribunal, the appellant preferred an appeal (Miscellaneous Appeal No.844 of 2004) before the Madhya Pradesh High Court, Gwalior Bench. In the High Court, the case was referred to Lok Adalat where the Insurance Company agreed for enhancement of the amount of compensation by Rs.50,000/-. It, however, appears that the matter could not be settled in the Lok Adalat and the appeal came to be finally heard and disposed of by the High Court on merits. The High Court by its judgment and order dated April 1, 2009 simply raised the amount of the monthly income of the appellant from Rs.2,400/- to Rs.3,000/- and, thereby, arrived at a sum of Rs.1,98,000/- as compensation for the loss of future earnings. The total compensation amount was, thus, raised from Rs.2,03,400/- to Rs.2,58,000/- (practically what was offered by the Insurance Company before the Lok Adalat on which no settlement was arrived at between the parties!)

7. On hearing counsel for the parties and on going through the materials on record, we are of the view that both the Tribunal and the High Court were in error in

pegging down the disability of the appellant to 50% with reference to Schedule 1 of the Workmen's Compensation Act, 1923. In the context of loss of future earning, any physical disability resulting from an accident has to be judged with reference to the nature of work being performed by the person suffering the disability. This is the basic premise and once that is grasped, it clearly follows that the same injury or loss may affect two different persons in different ways. Take the case of a marginal farmer who does his cultivation work himself and ploughs his land with his own two hands; or the puller of a cycle-rickshaw, one of the main means of transport in hundreds of small towns all over the country. The loss of one of the legs either to the marginal farmer or the cycle-rickshaw-puller would be the end of the road insofar as their earning capacity is concerned. But in case of a person engaged in some kind of desk work in an office, the loss of a leg may not have the same effect. The loss of a leg (or for that matter the loss of any limb) to anyone is bound to have very traumatic effects on one's personal, family or social life but the loss of one of the legs to a person working in the office would not interfere with his work/earning capacity in the same degree as in the case of a marginal farmer or a cycle-rickshaw-puller.

8. The question of loss of earning capacity resulting from amputation of one the legs in the case of a tanker driver was considered by this Court in *K. Janardhan v. United India Insurance Company Limited and another*, (2008) 8 SCC 518. In that case, a tanker driver suffered serious injuries in a motor accident and as a result, his right leg was amputated upto the knee joint. He made a claim under the Workmen's Compensation Act, 1923. The Commissioner for Workmen's Compensation held that disability suffered by him as a result of the loss of the leg was 100% and awarded compensation to him on that basis. In appeal, the High Court, like in the present case, referred to the Schedule to the Workmen's Compensation Act, 1923 and held that the loss of a leg on amputation amounted to reduction in the earning capacity by 60% and, accordingly, reduced the compensation awarded to the tanker driver. This Court set aside the High Court judgment and held that the tanker driver had suffered 100% disability and incapacity in earning his keep as a tanker driver as his right leg was amputated from the knee and, accordingly, restored the order passed by the Commissioner of Workmen's Compensation. In *K. Janardhan* this Court also referred to and relied upon an earlier decision of the Court in *Pratap Narain Singh Deo v. Srinivas Sabata* (1976) 1 SCC 289, in which a carpenter who suffered an amputation of his left arm from the elbow was held to have suffered complete loss of his earning capacity.

9. In a more recent decision in *Raj Kumar v. Ajay Kumar and another*, (2011) 1 SCC 343, this Court considered in great detail the correlation between the physical

disability suffered in an accident and the loss of earning capacity resulting from it. In paragraphs 10, 11 and 13 of the judgment in Raj Kumar, this Court made the following observations:

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. (2010) 10 SCC 254 and Yadava Kumar v. National Insurance Co. Ltd. (2010) 10 SCC 341).

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.

10. In light of the aforesaid decisions, we find it extremely difficult to uphold the decision of the High Court and the Tribunal based on the finding that the loss of the appellant's earning capacity as a result of the amputation of his left leg was only 50%. It is noted above that the appellant used to earn his livelihood as a cart puller. The Tribunal has found that at the time of the accident his age was 55 years. At that age it would be impossible for the appellant to find any job. From the trend of cross-examination it appears that an attempt was made to suggest that notwithstanding the loss of one leg the appellant could still do some work sitting down such as selling vegetables. It is all very well to theoretically talk about a cart puller changing his work and becoming a vegetable vendor. But the computation of compensation payable to a victim of motor accident who suffered some serious permanent disability resulting from the loss of a limb etc. should not take into account such indeterminate factors. Any scaling down of the compensation should require something more tangible than a hypothetical conjecture that notwithstanding the disability, the victim could make up for the loss of income by changing his vocation or by adopting another means of livelihood. The party advocating for a lower amount of compensation for that reason must plead and show before the Tribunal that the victim enjoyed some legal protection (as in the case of persons covered by The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995) or in case of the vast multitude who earn their livelihood in the unorganized sector by leading cogent evidence that the victim had in fact changed his vocation or the means of his livelihood and by virtue of such change he was deriving a certain income. The loss of earning capacity of the appellant, according to us, may be as high as 100% but in no case it would be less than 90%. We, accordingly, find and hold that the compensation for the loss of appellant's future earnings must be computed on that basis. On calculation on that basis, the amount of compensation would come to Rs.3,56,400/- and after addition of a sum of Rs.30,000/- and Rs.15,000/- the total amount would be Rs.4,01,400/-. The additional compensation amount would carry interest at the rate of 9% per annum from the date of filing of the claim petition till the date of payment. The additional amount of compensation along with interest

should be paid to the appellant without delay and not later than three months from today.

11. In the result, the appeal is allowed to the extent indicated above.