

**SUPREME COURT OF INDIA**

Sandeep Khanuja

Vs.

Atul Dande

C.A.No.1329 of 2017

(A.K.Sikri and R.K.Agrawal,JJ.,)

02.02.2017

**JUDGMENT**

**A.K.Sikri, J.,**

SLP(Civil)No.22790 of 2013)

1. Leave granted.

2. In a motor accident, the appellant herein suffered physical injuries. It happened on July 08, 2006 when the appellant was going on a scooter to Gram Pendri in the State of Chhattisgarh. When he reached near Gram Pendri, a Hyundai Getz car bearing Registration No. MH 12 CR 6917, driven by respondent No.1, hit the scooter, as a result of which the appellant fell down and sustained fractures on both the legs, thereby suffering permanent disability to some extent. He filed claim for compensation against the respondents before the Motor Accidents Claims Tribunal (MACT), Rajnandgaon, Chhattisgarh. The MACT, vide award dated May 05, 2009, granted him compensation in the sum of ^5,35,227, under the following heads:

<b>Head</b>	<b>Amount (in Rs.)</b>
Medical & Transport Expenses -	3,10,227
Loss of Income	1,00,000
Mental & Physical agony	30,000
Removal of rod inserted in right leg	25,000
Permanent disability to some extent	70,000
<b>TOTAL</b>	<b>5,35,227</b>

3. Not satisfied with the quantum of compensation, the appellant approached the High Court by way of appeal under Section 173 of the Motor Vehicles Act, 1988 (for short, the 'Act'). The High Court has, vide impugned judgment, enhanced the compensation to ^6,35,000. The

High Court has not awarded compensation under different heads but has deemed it proper to award lump sum compensation in the aforesaid amount. Relevant discussion in this behalf can be traced to paras 8 and 9 of the impugned judgment, which reads as under:

“(8) We have gone through the evidence adduced by the claimant on the issue of injury sustained by him. In our opinion, taking into consideration the nature of injury, the permanent disability occurred on the body of the appellant (claimant) to some extent, as a result of which he claims to be not as fit as he was prior to accident in his day-to-day work, resulting in reducing his capacity to do some extent of work, the expenditure incurred in receiving medical treatment in actual, the loss and mental pain suffered due to his involvement in accident we consider it proper to enhance in lump sum the compensation from Rs.5,35,227/- to Rs.6,35,000/-. In other words, in our view, the claimant is held entitled for a total sum of Rs.6,35,000/- by way of compensation for the injuries sustained by him.

(9) In our considered opinion, due to injuries in both legs which is also duly proved in evidence by the claimant and his doctor, he cannot freely move and attend to his duties. His movements are restricted to a large extent and that too in young age. It is for all these reasons, we feel that the Tribunal had awarded a less compensation under this head and hence, some enhancement under the head of pain and suffering and also under the head of permanent partial disability and loss of earning capacity is called for. This enhancement figure is arrived at taking into consideration all relevant factors.”

4. The appellant is not satisfied with the aforesaid approach and the manner in which the compensation is awarded. According to him, had the Court applied proper provision and principles laid down under the Act, the appellant would have been entitled to much more compensation.

5. We may state, at the outset, that the MACT recorded a specific finding that the accident took place due to rash and negligent driving of car by respondent No.1 which hit the scooter of the appellant. Respondent No.1 did not challenge the finding of the MACT and, therefore, this aspect has attained finality and we need not go into the same. The dispute, therefore, pertains only to the quantum of the compensation that has to be awarded. Few facts relevant for resolving the dispute, which appear on the record, are as under:

6. At the time of the accident, the appellant was aged about 30 years. He was working as a Chartered Accountant. The appellant had produced evidence to the effect that he had worked as a Chartered Accountant for various institutions for which he was paid professional fee. He had produced statements in this behalf (Exhibits P-195 to P-208) and on that basis he claimed that his monthly income was ^34,600. He also proved on record the income tax return for the year 2006-2007 (Exhibit P-194). The certificates which were produced by the appellant showing the professional fee which he had received was not accepted by the MACT on the ground that he had started the business in the month of March 2006 and there

was enough professional competition in the said field. Moreover, the person issuing the certificate had not been produced. On this basis, the Tribunal assessed the monthly income of the appellant at ^10,000.

7. Insofar as injuries suffered by the appellant in the said accident are concerned, he had stated that his health had impaired drastically and lungs infected because of which he was admitted in the Intensive Care Unit and he was kept on ventilator and was operated thrice. He had problem in climbing stairs, running, trouble of back while sleeping, etc. A rod is planted in his leg. Because of all this he has suffered 70% permanent disability, apart from mental and physical agony and the said disability is going to give him frustration and disappointment towards life. He pleaded that this disability has affected his efficiency in work as well resulting in loss of future income as well.

8. As already noticed above, the MACT granted him compensation by reimbursing expenses incurred towards treatment and transportation, loss of income, mental and physical agony and expenses for removing the rod planted in his leg. The appellant contends that compensation awarded for mental agony and physical suffering is too less. That apart, his main grievance is that only a paltry sum of 70,000 is awarded by the MACT for permanent disability suffered by him, which is too inadequate.

9. We may note in this behalf that the MACT, though accepted the aforesaid injuries and physical incapacity suffered by the appellant, was of the opinion that even when it was not possible for the appellant to do work like a healthy person, looking to the nature of the said injuries, insofar as work of a Chartered Accountant is concerned, he could still perform it properly and there was no impairment therein. For this reason, the MACT refused to award compensation to the appellant by applying the principle of multiplier based on permanent disability and granted a lump sum amount of ^70,000. The High Court has not gone into this aspect specifically.

10. In this conspectus, the only argument advanced by the learned counsel for the appellant was that the appellant was entitled to the compensation on the basis of multiplier, as per the provisions of the Act, for suffering permanent disability to the extent of 70% and there was no reason not to apply the said multiplier.

11. Learned counsel for the respondent, on the other hand, made an endeavour to justify the approach of the MACT with the submission that when the injuries suffered by him, even resulting in 70% permanent disability, had no adverse affect on the working of the appellant, who was a Chartered Accountant, he was not entitled to have the compensation computed by invoking the principle of multiplier.

12. We may observe at the outset that it is now a settled principle, repeatedly stated and restated time and again by this Court, that in awarding compensation the multiplier method is logically sound and legally well established. This method, known as 'principle of multiplier',

has been evolved to quantify the loss of income as a result of death or permanent disability suffered in an accident. Recognition to this principle was given for the first time in the year 1966 in the case of *Municipal Corporation of Delhi v. Subhagwanti & Ors*<sup>1</sup> Again, in *Madhya Pradesh State Road Transport Corporation, Bairagarh, Bhopal v. Sudhakar & Ors*<sup>2</sup>, the Court referred to an English decision while emphasising the import of this principle in the following manner:

“4. A method of assessing damages, usually followed in England, as appears from *Mallet v. McMonagle*<sup>3</sup>, is to calculate the net pecuniary loss upon an annual basis and to “arrive at the total award by multiplying the figure assessed as the amount of the annual ‘dependency’ by a number of ‘year's purchase’ that is the number of years the benefit was expected to last, taking into consideration the imponderable factors in fixing either the multiplier or the multiplicand...”

13. While applying the multiplier method, future prospects on advancement in life and career are taken into consideration. In a proceeding under Section 166 of the Act relating to death of the victim, multiplier method is applied after taking into consideration the loss of income to the family of the deceased that resulted due to the said demise. Thus, the multiplier method involves the ascertainment of the loss of dependency or the multiplicand having regard to the circumstances of the case and capitalising the multiplicand by an appropriate multiplier. The choice of the multiplier is determined by the age of the deceased or that of the claimant, as the case may be. In injury cases, the description of the nature of injury and the permanent disablement are the relevant factors and it has to be seen as to what would be the impact of such injury/disablement on the earning capacity of the injured. This Court, in the case of *U.P. State Road Transport Corporation & Ors. v. Trilok Chandra & Ors*<sup>4</sup>, justified the application of multiplier method in the following manner:

“13. It was rightly clarified that there should be no departure from the multiplier method on the ground that Section 110-B, Motor Vehicles Act, 1939 (corresponding to the present provision of Section 168, Motor Vehicles Act, 1988) envisaged payment of ‘just’ compensation since the multiplier method is the accepted method for determining and ensuring payment of just compensation and is expected to bring uniformity and certainty of the awards made all over the country.”

The multiplier system is, thus, based on the doctrine of equity, equality and necessity. A departure therefrom is to be done only in rare and exceptional cases.

14. In the last few years, law in this aspect has been straightened by this Court by removing certain cobwebs that had been created because of some divergent views on certain aspects. It is not even necessary to refer to all these cases. We find that the principle of determination of compensation in the case of permanent/partial disablement has been exhaustively dealt with after referring to the relevant case law on the subject in the case of *Raj Kumar v. Ajay Kumar & Ors*<sup>5</sup>. in the following words:

“Assessment of future loss of earnings due to permanent disability

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.”

15. The crucial factor which has to be taken into consideration, thus, is to assess as to whether the permanent disability has any adverse effect on the earning capacity of the injured. In this sense, the MACT approached the issue in right direction by taking into consideration the aforesaid test. However, we feel that the conclusion of the MACT, on the application of the aforesaid test, is erroneous. A very myopic view is taken by the MACT in taking the view that 70% permanent disability suffered by the appellant would not impact the earning capacity of the appellant. The MACT thought that since the appellant is a Chartered Accountant, he is supposed to do sitting work and, therefore, his working capacity is not impaired. Such a conclusion was justified if the appellant was in the employment where job requirement could be to do sitting/table work and receive monthly salary for the said work. An important feature and aspect which is ignored by the MACT is that the appellant is a professional Chartered Accountant. To do this work efficiently and in order to augment his income, a Chartered Accountant is supposed to move around as well. If a Chartered Accountant is doing taxation work, he has to appear before the assessing authorities and appellate authorities under the Income Tax Act, as a Chartered Accountant is allowed to practice up to Income Tax Appellate Tribunal. Many times Chartered Accountants are supposed to visit their clients as well. In case a Chartered Accountant is primarily doing audit work, he is not only required to visit his clients but various authorities as well. There are many statutory functions under various statutes which the Chartered Accountants perform. Free movement is involved for performance of such functions. A person who is engaged and cannot freely move to attend to his duties may not be able to match the earning in comparison with the one who is healthy and bodily abled. Movements of the appellant have been restricted to a large extent and that too at a young age. Though the High Court recognised this, it did not go forward to apply the principle of multiplier. We are of the opinion that in a case like this and having regard to the injuries suffered by the appellant, there is a definite loss of earning capacity and it calls for grant of compensation with the

adoption of multiplier method, as held by this Court in *Yadava Kumar v. Divisional Manager, National Insurance Company Limited & Anr*<sup>6</sup>

“9. We do not intend to review in detail state of authorities in relation to assessment of all damages for personal injury. Suffice it to say that the basis of assessment of all damages for personal injury is compensation. The whole idea is to put the claimant in the same position as he was insofar as money can. Perfect compensation is hardly possible but one has to keep in mind that the victim has done no wrong; he has suffered at the hands of the wrongdoer and the court must take care to give him full and fair compensation for that he had suffered.”

10. In some cases for personal injury, the claim could be in respect of lifetime's earnings lost because, though he will live, he cannot earn his living. In others, the claim may be made for partial loss of earnings. Each case has to be considered in the light of its own facts and at the end, one must ask whether the sum awarded is a fair and reasonable sum. The conventional basis of assessing compensation in personal injury cases—and that is now recognised mode as to the proper measure of compensation—is taking an appropriate multiplier of an appropriate multiplicand.”

16. In that case, after following the judgment in *Kerala SRTC v. Susamma Thomas*<sup>7</sup>, the Court chose to apply multiplier of 18 keeping in view the age of the victim, who as 25 years at the time of the accident.

17. In the instant case, the MACT had quantified the income of the appellant at Rs. 10,000, i.e. ^1,20,000 per annum. Going by the age of the appellant at the time of the accident, multiplier of 17 would be admissible. Keeping in view that the permanent disability is 70%, the compensation under this head would be worked out at ^14,28,000. The MACT had awarded compensation of ^70,000 for permanent disability, which stands enhanced to Rs. 14,28,000. For mental and physical agony and frustration and disappointment towards life, the MACT has awarded a sum of Rs.30,000, which we enhance to ^1,30,000. In this manner, the compensation that is payable to the appellant is worked out as under:

Head	Awardedby MACT Amount (in Rs.)	Head Now Payable Amount (in Rs.)
Medical & Transport - Expenses	3,10,227	3,10,227
Loss of Income	100,000	1,00,000
Mental & Physical agony	30,000	1,30,000
Removal of rod inserted in right leg	25,000	25,000
Permanent disability to some extent	70,000	14,28,000

<b>Total</b>	<b>5,35,227</b>	<b>19,93,227</b>
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The appellant shall also be entitled to the interest, as awarded by the High Court, as well as costs of this appeal. The amount shall be paid to the appellant within two months after deducting the payments already made.

18. The appeal is disposed of accordingly.

<sup>1</sup>(1966) 3 SCR 0649

<sup>2</sup>(1977) 3 SCC 0064

<sup>3</sup>(1969) ACJ 0312 (HL. England)

<sup>4</sup>(1996) 4 SCC 3625

<sup>5</sup>(2011) 1 SCC 0343

<sup>6</sup>(2010) 10 SCC 0341

<sup>7</sup>(1994) 2 SCC 0176