NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 6038 OF 2003

S. Kumar (Dead) **Appellant(s)**

VS.

United India Insurance Co. Ltd. & Anr. **Respondent(s)**

JUDGMENT

Dinesh Maheshwari., J

This appeal by special leave is directed against the judgment and order dated 21.06.2001, as passed in C.M.A. No.1101 of 1995 and Cross Objection No. 70 of 1996, whereby the High Court of Judicature at Madras has modified the award dated 27.04.1995, as made by the Motor Accidents Claims Tribunal, Chennai (II Judge, Court of Small Causes, Chennai) in MACT O.P. No. 2932 of 1992.

In the impugned judgment and order dated 21.06.2001, the High Court has made substantial downward revision of the amount of compensation awarded by

the Tribunal to the injured claimant-appellant; and in place of the amount awarded by the Tribunal to the tune of Rs. 4,58,060/- together with interest @ 15% p.a., has awarded a sum of Rs. 2,11,060/- together with interest @ 9% p.a. from the date of filing of the claim application. The High Court has made such reduction in the amount of compensation awarded by the Tribunal after disbelieving the case of 95% permanent partial disablement, as projected by the claimant and accepted by the Tribunal; and has allowed compensation only with reference to the injury of fracture of left thigh bone, as originally certified.

3. The question in this appeal, therefore, is as to whether the High Court was justified in modifying the award and reducing the amount of compensation awarded by the Tribunal? The background aspects of the matter, so far relevant for the question at hand, may be noticed, in brief, as follows:
On 02.08.1992 at about 05.30 p.m., the claimant-appellant, while walking alongside a road, sustained grievous injuries on being hit by an auto rickshaw owned by the respondent no. 2 and insured by the respondent no. 1. The appellant made the claim for compensation with the submissions, *inter alia,* that at the time of accident, he was 25 years of age and was earning Rs. 2,750/- per month while working as a mason. Apart from asserting rash and negligent driving of the auto rickshaw in question, the appellant submitted that due to the accident, he had sustained the injuries of fracture of left thigh bone and on left side of the skull as also other injuries in his stomach region and testis; he remained in-patient in the Government Hospital for 3 months and later on, he had to take

treatment as out-patient for another 3 months. The claimant further submitted that he was again admitted to the hospital where he remained in-patient until 25.12.1992 and operations were performed on his hip as also on testis, to bring them back to the normal position. The claimant-appellant alleged that after the accident, his left leg was shortened by 2"; that he was suffering from intermittent headache and giddiness; and that due to the injuries, he was unable to do any work, was unable to marry, and was not fit for marital life.

4. As regards his alleged injuries and disablement, the appellant examined two doctors in evidence namely, Dr. Sai Chandran as PW-1 and Dr. Thiagarajan as PW-4. While PW-1 pointed out that after examination, he found the left leg of the claimant-appellant shortened by 2" due to the fracture of upper portion of his thigh bone; that he could not sit and stand freely; and that his hip movements were reduced by 15^{o} because of which, he could not do any hard labour. The said doctor had assessed the permanent partial disablement of the claimant-appellant at 45%. However, in order to prove further disablement, the claimant examined PW-4, who stated that on examination of the claimant-appellant, he found fracture of left thigh bone and injury on skull; and that his left testis had not come back to original position. The said doctor PW-4 even deposed to the extent that the claimant-appellant would not be able to perform intercourse; and purportedly assessed the permanent partial disablement at further 50%.

5. The Tribunal, with reference to the testimony of the said two doctors and as also the testimony of claimant-appellant, proceeded to award compensation to the tune of Rs. 4,58,060/- in the following manner: The Tribunal awarded a sum of Rs. 31,000/- towards loss of earning from 03.08.1992 to 31.07.1993; Rs. 3,500/- towards travelling expenses; Rs. 6,360/- for nutrition and diet; Rs. 200/- for damage to the dress material; Rs. 10,000/- towards medicines; Rs. 56,000/- towards pain and suffering; Rs. 1,15,000/- towards permanent disablement and Rs. 2,36,000/- towards future loss of earning. The Tribunal also awarded interest @ 15% p.a. from the date of filing of the claim application.

6. In appeal by the insurer, the High Court did not interfere with the amount of compensation awarded towards loss of earning, travelling and dietary expenditure, and dress material. However, the High Court found that there was no proof towards cost of medicines and hence, disallowed the claim in that regard. As regards other aspects related with injury and disablement, the High Court meticulously examined the evidence including the testimony of the doctors, PW-1 and PW-4 and disbelieved the suggestions of PW-4, who had allegedly examined the claimant-appellant after about 2½ years of the accident. After observing that at the initial stage, there had not been any indication of the alleged scrotum injury as also the head injury, the High Court pointed out its specific reasons for disbelieving the suggestions put forward by the claimant-appellant with PW-4, particularly with reference to the testimony of PW-1 in the following:-

"12. …The evidence of the doctor P.W. 1 is that because of the fracture in his left thigh bone the height of his left leg has been reduced by two inches and he is not able to sit and he cannot do heavy work and he has assessed the disability as 45%. He has given certificate Ex. P.1. P.W.1 has examined the injured claimant on 26.6.1993 and issued that certificate after perusal of the case sheet of the claimant as inpatient. P.W. 1 specifically says that the claimant did not tell him that he had sustained any other injury except the one on his left hip and he did not sustain any injury on his head. Even though P.W. 3 the claimant specifically says that he sustained injury or his head also. P.W. 1's evidence shows that the claimant did not tell him with regard to any there was no scrotum injury (sic)*. Ex. P.7 which was given after lapse of about 3 months shows that left side of scrotum was normal and right side was undescended testis with minimal Hydrocele and it also shows that it was not due to accident and for the minimal Hydrocele only surgery was done after a period of three months after the accident. So, it is crystal clear that there was no scrotum injury and nothing to the scrotum was caused due to that accident. So, the evidence of P.W. 4 and the certificate issued by him with regard to the disability for the injury caused to the scrotum and private part are not reliable and no importance can be attached to them....."*

7. The High Court, while rejecting the case of claimant-appellant regarding the injury to scrotum and skull, reduced the compensation towards disablement from Rs. 1,15,000/- to Rs. 50,000/-, towards pain and suffering from Rs. 56,000/- to 20,000/-, and towards future loss of earning from Rs. 2,36,000/- to Rs.1,00,000/- while observing as under:-

"14. On a perusal of the evidence of P.W. 4, we are of the view that he is not speaking truth. He has not taken any x-ray with regard to the damage caused to the private part of the claimant. In the initial stage, after the accident, there was no whisper at all by the claimant with regard to injury sustained by him in his scrotum. Only in the year 1995, P.W. 4 examined

him and gave disability certificate for 50% for the damage caused to his scrotum. There is also no acceptable proof that because of this accident, his marital life was affected. For the foregoing discussions, we are quite unable to accept that the claimant has sustained 95% disability. There is no proof with regard to permanent disability caused to the claimant and he was deprived of his attending even to his normal work. Of course, he has sustained fracture on his thigh and other injuries..."

8. The High Court also reduced the rate of interest as awarded by the Tribunal @ 15% p.a. and found it appropriate to award interest @ 9% p.a. with reference to the decision of this Court in the case of ***Smt. Kaushnuma Begum v. New India Assurance Co. Ltd. and Ors.*** **: 2001 (2) SCC 9**.

9. Seeking to assail the judgment of the High Court whereby, the amount of compensation awarded by the Tribunal has been reduced substantially, learned counsel for the appellant has strenuously argued that the High Court has committed a serious error in reducing the quantum of compensation by disbelieving the testimony of doctors who had thoroughly examined and treated the appellant. Learned counsel would argue that despite there being clear proof of multiple injuries suffered by the appellant and his long drawn treatment, the High Court has gone too restrictive in not awarding any amount towards medicines and in reducing drastically the amount of compensation towards disablement, loss of earning capacity and pain and sufferings. On the other hand, learned counsel for the contesting respondent has duly supported the judgment of the High Court.

10. Having heard learned counsel for the parties and having examined the record, we are satisfied that the High Court has made downward revision of the quantum of compensation awarded by the Tribunal for cogent and convincing reasons; and in the ultimate analysis, the amount awarded by the High Court cannot be said to be too low or grossly inadequate so as to call for interference by this Court.

11. On a bare look at the award of the Tribunal, it is but apparent that the Tribunal merely summed up the alleged 45% permanent partial disablement of the appellant, as initially certified by PW-1 (who had examined him immediately after the accident) with 50% permanent partial disablement of the appellant, as later on certified by PW-4 (who had allegedly examined him 2½ years after the accident) and, in this manner, assessed the disablement to the extent of 95%. The approach of the Tribunal had been suffering from obvious errors and infirmity inasmuch as there was neither any basis nor any reason to sum up the percentage of disablement stated by the two doctors and to take it to be a case of 95% permanent partial disablement. Moreover, the Tribunal had totally failed to consider that the suggestions about injury to the skull as also injury to the scrotum were falsified by the testimony of the doctor PW-1, who had found the only injury being that of fracture of left thigh bone. The said doctor PW-1 specifically stated that the claimant did not tell him about any other injury except the one on the left hip; and that the claimant did not sustain any injury on his head. It appears from the testimony of the claimant-appellant that he allegedly

took treatment as regards scrotum in the months of November-December 1992, but there is no evidence on record to co-relate any such ailment or deformity concerning scrotum with the accident in question. Therefore, in our view, the High Court has been justified in rejecting the case of 95% permanent partial disablement and the suggestions about the injuries other than that on the left thigh bone of the appellant.

12. Moreover, a relevant feature of this case gets noticed *per force* and in view of indisputable facts available on record. The claimant-appellant overtly suggested in the claim application that he had suffered injuries to his private parts and at the age of 25 years, such injuries resulted in his inability to have the bliss of marital life. The appellant has, unfortunately, expired during the pendency of this appeal and his legal representatives, being his wife, mother and three children are substituted as appellants in his place. The very extent of the family left behind by the appellant, inclusive of his wife and three children, obviously falsify his suggestions about inability of having marital life. We do not wish to elaborate further on this aspect of the matter; suffice it to observe for the present purpose that the case of excessive injuries and disablement, as projected by the claimant-appellant with reference to the testimony of PW-4 was bound to be, and has rightly been, rejected by the High Court.

13. Coming to the question of just compensation, though it is noticed that the High Court has substantially reduced the amount of compensation awarded by

the Tribunal but then, such a reduction was the natural consequence of rejection of the case of 95% disablement. The High Court has, otherwise, examined the entire evidence on record and, in the ultimate analysis, the amount awarded by the High Court at Rs. 2,11,060/- cannot be said to be too low or grossly inadequate on the facts and in the circumstances of this case. In this view of the matter, some restriction by the High Court towards loss of earning or disallowance of expenses of medicines, do not make out a case for interference because, as observed, the ultimate award amount is not grossly inadequate in the given set of facts and circumstances. As regards interest, the Tribunal had been rather generous in awarding the same at an exorbitant rate of 15% p.a. that was liable to be reduced. In fact, the High Court has yet allowed a comparatively higher rate of interest at 9% p.a. We find absolutely no reason to consider any upward revision in the amount of compensation awarded in this case by the High Court.

14. For what has been discussed and observed hereinabove, this appeal fails and is, therefore, dismissed.

.....J.
(ABHAY MANOHAR SAPRE)

.....J.
(DINESH MAHESHWARI)

New Delhi
Dated: 18 February, 2019.