REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 9070-9071 OF 2022
(Arising out of Special Leave Petition (Civil) Nos. 481-482 of 2019)

MOHD. SABEER @ SHABIR HUSSAIN … APPELLANT (S)

VERSUS

REGIONAL MANAGER, U.P. STATE ROAD TRANSPORT CORPORATION … RESPONDENT (S)

JUDGMENT

KRISHNA MURARI, J.

Leave granted.

2. The present appeals are directed against the final order dated 12.10.2018 passed by the High Court of Delhi, (hereinafter referred to as "**High Court**") in Review Petition No. 391 of 2018 and against the impugned final judgment dated 11.09.2018 passed by the High Court of New Delhi.

3. Briefly, the facts relevant for the purpose of this appeal are as follows:

I. The Appellant, who is a scrap dealer, was travelling in a bus bearing No. UP-25T-9664 towards his residence in Delhi from his native place at Noor Pur, Gajrola.

II. The driver of the bus, who is the Respondent No.1 herein was driving in a rash and negligent manner. At around 12:30 am, near the Jindal Pipe Factory in Ghaziabad, the Respondent no.1 driver hit a standing tempo which was parked on the left side of the road.

III. As a result of this accident, the Appellant and the other passengers in the bus received grave injuries all over their bodies. The Appellant was aged 37 years at the time of the accident and was earning Rs.10,000/- per month. As per the Disability Certificate, the Appellant suffered permanent disability of 70%, his right lower limb amongst other injuries.

4. The Appellant after the accident filed a claim petition before the Motor Accident Claims Tribunal Delhi-II, Dwarka Court, New Delhi claiming a compensation of Rs.20,00,000/- (Twenty Lakhs).

5. The Ld. Motor Accident Claim Tribunal (hereinafter referred to as **'MACT'**) after examining the evidence and issues at hand, held that the Respondent No.1 was the driver of the vehicle, and it was his rash and

negligent driving that caused the accident. The Ld. MACT awarded a compensation of Rs.15,76,465/- to the Appellant along with 7.5% interest per annum, the breakup of the same is as follows:

Cost Of Artificial limb and its Maintenance	Rs. 5,70,000/-
Loss Of Future Earning	Rs. 6,09,345/-
Medical Expenses	Rs. 57,650/-
Attendant Charges	Rs. 11,802/-
Conveyance	Rs. 10,000/-
Special Diet	Rs. 15,000/-
Pain and Suffering	Rs. 1,00,000/-
Loss of Amenities of Life	Rs. 1,00,000/-
Loss due to Disability and Disfigurement	Rs. 1,00,000/-
TOTAL	Rs. 15,76,465/-

6. The Appellant then filed MAC App. No. 444/2013 before the High Court of Delhi on grounds that the Ld. MACT did not calculate the loss of earning capacity, future prospects and wrong computation of the Appellant's disability.

7. The High Court of Delhi vide judgment dated 11.09.2018 modified the award passed by the Ld. MACT and disposed of the Appeal by enhancing the compensation to Rs.16,70,932/- with 9% interest per annum. The relevant part of the judgment reads as follows:-

> **"…***Upon hearing and on perusal of impugned Award and the evidence on record, I find that on the aspect of discrepancy in timing of the accident, there is no cross- examination of Injured and so, Insurer cannot be absolved from paying the compensation awarded. It is not the case of Conductor (R2W1) that the Injured was not travelling in the bus in question. Therefore, the Tribunal has rightly relied upon the evidence of Injured (PW-4) to hold that the negligence was of the bus driver in causing of the accident in question. The Tribunal has assessed the functional disability of Injured to be 30%. The permanent disability is 70% in relation to right lower limb. It is a case of amputation of right leg below the knee and so, the functional disability is assessed at 35%. On the quantum aspect, I find that though there is "loss of future earning", but the "earning capacity" of the Injured has been certainly compromised. Income of the deceased has been assessed by the Tribunal on the basis of ITRS, which were filed after this accident, but there is no basis to conclude that the income of Injured was less than the one reflected in the ITRS for the year 2008-09. On this aspect also, there is no cross-examination of Injured. Therefore, in the facts of instant case, the Tribunal has rightly assessed the "loss of earning capacity" while taking the income of the Injured as reflected in the ITRs. The Tribunal has erred in applying the multiplier of 16. The applicable multiplier is of 15. As regards the age of Injured, there is no cross-examination of the Injured on this aspect. Therefore, the age of the Injured is taken to be 37 years, which would attract the multiplier of 15. ITRS relied upon by Injured reveals that his income had increased despite the disability caused and so, it cannot be said that there is "loss of future earning.…"*

8. Subsequently, the Appellant filed a Review Petition No. 391 of 2018 before the High Court of New Delhi seeking for enhancement of compensation to Rs.20,00,000/-, and the same was dismissed vide judgment dated 12.10.2018 whilst upholding the judgment passed in the appeal. Being aggrieved by the same, the Appellant herein has filed the present Civil Appeal.

ARGUMENTS ON BEHALF OF THE APPELLANT

9. The Ld. Counsel for the Appellant contended that : -

I. The High Court wrongly assessed the appellant's loss of income due to the disability to be only 35%, when the medical board has assessed the petitioner's permanent disability to be 70%. The appellant as a result of the injuries cannot drive his vehicle and cannot lift heavy weights.

II. Since the Appellant's income was assessed on the basis of documentary evidence, the Appellant ought to have been awarded future prospects to the extent of 50%.

III. The compensation granted for the repair, purchase and maintenance of the Artificial leg is inadequate. It was submitted that the cost of the artificial limb is Rs.2,60,000/-, and the life of the limb is 5-6 years. The limb further requires repair after every 6 months, and the cost of repair is between Rs.15,000/- to Rs.20,000/-. The Appellant is aged only 37

years and will require the limb for the rest of his life, which would mean that the current compensation of Rs.5,20,000/- is inadequate.

IV. The compensation awarded to the Appellant under the head "Pain and Agony" and "loss due to disability and disfigurement" being Rs.1,00,000/- each is inadequate. The counsel relied on ***Anant son of Sidheshwar Dukre Vs. Pratap son of Zhamnnappa Lamzane & Anr.***[1].

ARGUMENTS ON BEHALF OF THE RESPONDENTS

10. Per contra, The Ld. Counsel for the respondents contended that:

I. The High Court has rightly taken functional disability as 35% towards amputation of lower limb. The High Court has already increased the future loss of Income from Rs.6,09,345/- to Rs.6,66,480/- and further increased the amount towards conveyance from Rs.10,000/- to Rs.50,000/-.

II. The High Court has rightly not granted future prospects as the Income Tax Returns of the Appellant has increased despite disability caused from Rs. 1,26,947/- from 01.04.2007 to 31.03.2008 to Rs.1,67,147/- from 01.04.2008 to 31.03.2009.

1 Civil Appeal No. 8420 of 2018 (Dated : August 21, 2022)

III. The Appellant is a scrap dealer and works out of his shop. He does not require a lot of movement to carry out his work and therefore his disability does not affect his earning capacity.

IV. The Appellant had already filed a review petition in the High Court and the same was dismissed rightfully.

ANALYSIS

11. We have heard the counsels appearing on behalf of the Appellant and the Respondents in great detail.

12. The High Court has rightly held that the accident in question did take place, the Appellant did suffer damages due to the negligence of Respondent No.1 driver and that the Insurer cannot be absolved from paying the compensation Awarded. The only question that remains for us to decide is on the aspect of the quantum of damages awarded.

LOSS OF INCOME DUE TO FUNCTIONAL DISABILITY

13. The Appellant has suffered an amputation of the lower right limb, a fracture in the medial wall of the bilateral orbit, crush injury right leg, fracture tibia right leg, exposed vessels and other injuries. As per the

disability certificate, the Appellant has suffered 70% disability, however the High Court has held that the Appellant has only suffered 35% loss in future earnings due to the disability.

14. To assess the quantum of compensation to be awarded, this Court has to assess whether the permanent disability caused has any adverse effect on the earning capacity of the Appellant, as held by this Court in the case of ***Sandeep Khanuja Vs. Atul Dande and Anr.***[2]. The relevant paragraph of the judgment is quoted hereunder :-

> "*The crucial factor which has to be taken into consideration thus is to assess whether the permanent disability has any adverse effect on the earning capacity of the injured. We feel that the conclusion of the MACT on the application of 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….. 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 able. Movements of the appellant have been restricted to a large extent and that too at a young age.*"

15. This Court has also laid out in the case of ***Raj Kumar Vs Ajay Kumar and Anr.***[3] that where the claimant suffers a permanent disability as a result of injuries, the assessment of compensation for loss of future earnings would

2 (2017) 3 SCC 351
3 (2011) 1 SCC 343

depend upon the impact and effect of the Permanent Disability on his earning capacity. This Court observed as under :-

> *"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, 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. What requires to be assessed by the Tribunal is the effect of the permanently 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 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."*

16. The Appellant herein has suffered permanent disability of 70% and has an amputated right lower limb amongst other injuries. The High

Court has wrongly taken the view that the Appellant has only suffered 35% functional disability. The Appellant is not a salaried person but is self-employed who manages his business. For the Appellant to be able to augment his income, he is most definitely required to move around. The Appellant can also not drive on his own, which hinders his mobility further. This proves that the functional disability of the Appellant will severely impact his earning capacity, and the 35% functional disability calculated by the High Court is incorrect in the facts and circumstances of the case and in our view the loss of future earning capacity must be calculated at 60%.

FUTURE PROSPECTS

17. The High Court has not applied the quantum for future prospect in the compensation granted. In its reasoning, the High Court has stated that the Income tax returns relied upon by the Appellant show that despite the injury the Appellant's income had subsequently increased and hence it cannot be said that there is a loss of future earnings.

18. It is a well settled position of law that in cases of permanent disablement caused by a motor accident, the claimant is entitled to not just future loss of income, but also future prospects. It has been reiterated by this Court in multiple instances that "just compensation" must be

interpreted in such a manner as to place the claimant in the same position as he was before the accident took place.

19. The accident that caused the injury took place on 12.06.2009. The acknowledgement of both the Income Tax Returns produced by the Appellant show that Tax Returns were till 31.03.2008 and 31.03.2009. Both the Income Tax Returns produced as proof of income were from before the accident took place, and hence the High Court's finding that the income of the Appellant has increased after the disability is incorrect.

20. It is also to be noted that even if the income of the Appellant had increased after the accident, it would not be enough grounds to disable the Appellant from claiming compensation for future prospect as the rise in income may be attributed to multiple other factors.

21. In light of ***National Insurance Company Limited v. Pranay Sethi & Others***[4]**,** the applicable 40% addition of future prospects will be given as compensation to the Appellant herein.

COMPENSATION FOR THE PURCHASE AND MAINTENANCE OF THE PROSTHETIC LEG

22. The High Court has awarded a compensation of Rs.5,20,000/- for the prosthetic limb and Rs.50,000/- towards repair and maintenance of the

4 (2017) 16 SCC 680

same. The Appellant submits that the cost of the prosthetic limb itself is Rs. 2,60,000/- and the life of the prosthetic limb is only 5-6 years. The prosthetic limb also requires repair and maintenance after every 6 months to 1 year, and each repair costs between Rs.15,000 to Rs.20,000/-. This would mean that the prosthetic limb would last the Appellant for only 15 years under the current compensation. The Appellant at the time of the accident was aged 37 years and has a full life ahead. It has been clearly stated by this Court in the case of ***Anant Son of Sidheshwar Dukre (Supra)*** that the purpose of fair compensation is to restore the injured to the position he was in prior to the accident as best as possible. The relevant paragraph of the judgment is being extracted herein:

> ***"****In cases of motor accidents leading to injuries and disablements, it is a well settled principle that a person must not only be compensated for his physical injury, but also for the non-pecuniary losses which he has suffered due to the injury. The Claimant is entitled to be compensated for his inability to lead a full life and enjoy those things and amenities which he would have enjoyed, but for the injuries."*
>
> ***"****The purpose of compensation under the Motor Vehicles Act is to fully and adequately restore the aggrieved to the position prior to the accident."*

23. As per the current compensation given for the prosthetic limb and its maintenance, it would last the Appellant for only 15 years, even if we were to assume that the limb would not need to be replaced after a few

years. The Appellant was only 37 years at the time of the accident, and it would be reasonable to assume that he would live till he is 70 years old if not more. We are of the opinion that the Appellant must be compensated so that he is able to purchase three prosthetic limbs in his lifetime and is able to maintain the same at least till he has reached 70 years of age. For the Prosthetic limbs alone, the Appellant is to be awarded compensation of Rs. 7,80,000 and for maintenance of the same he is to be awarded an additional Rs. 5,00,000/-.

NON-PECUNIARY COMPENSATION

24. The High Court has upheld the compensation awarded by the Ld. Tribunal for non-pecuniary damages, which comes to Rs. 3,00,000/- in total. Considering the nature of the permanent disability caused by the accident and the effect it will have on the Appellant's life, this Court is of the opinion that the compensation provided by the High Court for non-pecuniary heads is inadequate.

25. In ***R.D. Hattangadi v. Pest Control (India) (P) Ltd.***[5] dealing with the different heads of compensation in injury cases this Court held that:

5 (1995) 1 SCC 551

> *"Broadly speaking while fixing the amount of compensation payable to a victim of an accident, the damages have to be assessed separately as pecuniary damages and special damages. Pecuniary damages are those which the victim has actually incurred and which are capable of being calculated in terms of money; whereas non-pecuniary damages are those which are incapable of being assessed by arithmetical calculations. In order to appreciate two concepts pecuniary damages may include expenses incurred by the claimant: (i) medical attendance; (ii) loss of earning of profit up to the date of trial; (iii) other material loss. So far as non-pecuniary damages are concerned, they may include: (i) damages for mental and physical shock, pain and suffering, already suffered or likely to be suffered in the future; (ii) damages to compensate for the loss of amenities of life which may include a variety of matters i.e. on account of injury the claimant may not be able to walk, run or sit; (iii) damages for loss of expectation of life i.e. on account of injury the normal longevity of the person concerned is shortened; (iv) inconvenience, hardship, discomfort, disappointment, frustration and mental stress in life."*

26. In light of the above decision of this Court and the facts and circumstances of the case at hand, the compensation to be awarded is as follows:

I. Compensation for pain and suffering – Rs. 2,00,000/-
II. Compensation for Loss of Amenities of Life – Rs. 2,00,000/-
III. Compensation for disability and disfigurement – Rs. 2,00,000/-

CONCLUSION

27. We are of the opinion that while awarding compensation in cases of permanent disability caused to claimants, the courts must look at the

case in totality, and must consider the socio-economic background of the claimants. The Appellant herein comes from an economically weaker section of the society.

28. It is almost universally seen that persons from marginalized backgrounds often face an additional layer of discrimination due to bodily disabilities. This is because persons from marginalized sections of the society already face severe discrimination due to a lack of social capital, and a new disability more often than not compounds to such discrimination. In such circumstances, to preserve the essence of justice, it becomes the duty of the Court to at the very least restore the claimant as best as possible to the position he was in before the occurrence of the disability, and to do so must award compensation in a liberal manner.

29. While no material compensation can completely negate the trauma and suffering that the injured and his family faces, the law only knows the language of monetary compensation in such cases. It then becomes to duty of the court to translate the provisions of monetary compensation into a fabrication that helps the injured and his family in coping with their loss.

30. On the basis of the abovementioned facts and analysis, this Court is of the opinion that the just compensation to be awarded to the claimant/appellant under different heads ought to be as under :-

Cost Of Artificial limb and its Maintenance	Rs. 12,80,000/-
Loss Of Earning Capacity due to Functional Disability	Rs. 11,34,000/-
Future Prospects	Rs. 7,61,668
Medical Expenses	Rs. 57,650/-
Attendant Charges	Rs. 11,802/-
Conveyance	Rs. 10,000/-
Special Diet	Rs. 15,000/-
Pain and Suffering	Rs. 2,00,000/-
Loss of Amenities of Life	Rs. 2,00,000/-
Loss due to Disability and Disfigurement	Rs. 2,00,000/-
TOTAL	**Rs. 38,70,120 /-**

31. In view of the aforesaid facts and circumstances, the impugned judgment is liable to be modified as above and the claimant/appellant is held entitled to be awarded compensation to the tune of Rs. 38,70,120/- along with 9% interest per annum from the date of making the application.

32. Accordingly, the appeals stand allowed.

….....……...…….,J.
(KRISHNA MURARI)

……..…...….....…,J.
(S. RAVINDRA BHAT)

NEW DELHI;
09TH DECMEBER, 2022

www.taxcode.in