

The Managing Director Vs. Devanathan

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Court : Chennai

Decided On : Jun-19-2014

Judge : S.Manikumar

Appellant : The Managing Director

Respondent : Devanathan

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS DATED :

19. 06.2014 CORAM THE HONOURABLE MR.JUSTICE S.MANIKUMAR C.M.A.No.1833 of 2014 and M.P.No.1 of 2014 The Managing Director Tamil Nadu State Transport Corporation Karaikudi. ... Appellant ..vs.. Devanathan ... Respondent This Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, against the order and decretal order dated 21.07.2011 made in MCOP.No.40 of 2009 on the file of the Motor Accident Claims Tribunal (Sub Court), Neyveli. For Appellant : Mr.V.S.Vijay Veliappan

JUDGMENT

It is the case of the respondent that on 05.10.2008, when he was driving a Taurus lorry bearing registration No.TN-31-J-4201, belonging to Mahalakshmi Transport, from Ramanathapuram to Valinokkam, on 06.10.2008, about 12.30 a.m, there was some mechanical defects, and hence, he stopped the lorry, to rectify the defects. At that time, a Transport Corporation bus bearing registration No.TN-63-N-0694

driven in a rash and negligent manner by its driver, dashed against him and on the left side of the Taurus lorry, causing grievous injuries to the respondent/claimant. A case in Crime No.76 of 2008 under Sections 279 and 337 IPC was registered against the driver of the Transport Corporation bus. According to the respondent, he took treatment in Government Hospital, Ramanathapuram and thereafter, in Cuddalore Government Hospital. After discharge from the Government Hospital, he has also taken treatment, in Pondicherry Institute of Medical Sciences (in short, PIMS) for 20 days. It is the case of the respondent/claimant that, at the time of accident, he was a Heavy Goods Lorry driver and earned Rs.12,000/- per month. For the pecuniary and non-pecuniary losses, he claimed compensation of Rs.5,00,000/- in MCOP.No.40 of 2009 on the file of the Motor Accident Claims Tribunal (Sub Court), Neyveli.

2. Opposing the claim, the Transport Corporation denied negligence attributed against its driver. The Transport Corporation further submitted that the accident occurred only due to the rash and negligent driving of the Taurus lorry, bearing registration No.TN-31-J-4201. The Corporation prayed for dismissal of the claim petition on the grounds of non-joinder of insurer of the Taurus vehicle. Without prejudice to the above, they disputed the nature of injuries, period of treatment, employment, income and the quantum of compensation claimed under various heads.

3. Before the Claims Tribunal, the respondent/claimant examined himself as PW.1 and reiterated the manner of accident. He has also adduced evidence regarding the nature of injuries, period of treatment, extent of disablement, suffered and other aspects. PW.2 Doctor has deposed that the respondent/claimant has suffered disablement. Ex.P1-Copy of the First Information Report, Ex.P2-Copy of the Accident Register issued by the Government Hospital, Ramanathapuram, Ex.P3-Copy of Out-patient chit and Accident Form, issued by the Government Hospital, Cuddalore, Ex.P4-Discharge Endorsement made by PIMS, Pondicherry, Ex.P5-Scan Report, Ex.P6-Certificate issued by Dr.Sivasubramanian of the Government Hospital, Cuddalore, Ex.P7-Medical receipts for taking treatment at PIMS, Pondicherry, Ex.P8-Copy of the Motor Vehicles Inspector Report, Ex.P9-Copy of the Driving Licence of the petitioner, Ex.P10-Copy of the Permit, for the

vehicle bearing registration No.TN-31-J-4201, Ex.P11-Copy of the Registration Certificate for the vehicle, bearing registration No.TN-31-J-4201, Ex.P12-Copy of the Insurance Policy, for the vehicle bearing registration No.TN-31-J-4201, Ex.P13-Salary Certificate of the petitioner, Ex.P14-X ray and Ex.P15-Disability Certificate have been marked. The Transport Corporation examined the Assistant Engineer, as RW.1 and adduced evidence.

4. On evaluation of pleadings and evidence, the Claims Tribunal held that the driver of the Transport Corporation bus bearing registration No.TN-63-N-0694, was negligent in causing the accident. Based on the medical evidence adduced, coupled with the oral testimony of PW.2 Doctor, who assessed the extent of disablement, the Claims Tribunal has awarded Rs.1,99,000/- as compensation, with interest, at the rate of 7.5% per annum, from the date of claim, till realisation and apportioned the same as hereunder. Partial and permanent disability - Rs.1,72,000/- Medical Expenses - Rs. 12,000/- Future Medical Expenses and Nutrition - Rs. 15,000/- ----- Total - Rs.1,99,000/- ----- 5. At the outset, Mr.V.S.Vijay Veliappan, learned counsel for the Transport Corporation submitted that the quantum of compensation is the only challenge in this appeal. Submission is placed on record. Hence, it is not necessary to advert to the aspect of negligence and liability.

6. According to the learned counsel for the Transport Corporation, the extent of disablement i.e., 50% taken into consideration by the Claims Tribunal, for the purpose of computing the loss of future earning, is erroneous. He submitted that the respondent/claimant did not suffer any grievous injury and any consequential disability. He further submitted that determination of monthly income as Rs.12,000/- is erroneous. Except the above, no other submissions have been made.

7. Though the learned counsel for the appellant/Transport Corporation contended that the injuries were not so grave, warranting any assessment, upon perusal of Ex.P2-Accident Register, Ex.P3-Outpatient chit and Accident Form issued by the Government Hospital, Cuddalore, and Ex.P4 Discharge Summary issued by the Pondicherry Institute of Medical Sciences (PIMS), Ex.P5-Scan Report, the Claims

Tribunal has recorded that the respondent has sustained right pubic bone fracture, left iliac bone fracture. PW.2 Doctor, who examined the respondent, with reference to the medical records, has assessed the disability as 40%. At the time of accident, the injured was aged 31 years. Measuring the quantum of compensation as Rs.4,300/- per percentage of disability, the Claims Tribunal has awarded Rs.1,72,000/- for the 40% partial and permanent disability. The method adopted in arriving the compensation under the head disability is not supported by any decision. However, at this juncture, this Court deems it fit to consider the parameters to be taken into consideration, for awarding a just and reasonable compensation, to the injured, who suffered disability.

8. A Full Bench of this Court in Cholan Roadways Corporation Ltd., Kumbakonnam vs. Ahmed Thambi and others reported in 2006 (4) CTC433 has set out broad guidelines for computing the total compensation in respect of injury cases. Paragraph No.19 of the judgment of the Full Bench would be relevant for the purpose of assessment of a just and reasonable compensation. ".In order to avoid any future confusion and to bring more clarity and transparency in the award of damages, it is necessary that the Tribunal, while awarding damages, should itemise the award under each of the head namely, pecuniary losses and non-pecuniary losses. In the non-pecuniary losses and the tribunal shall consider a) pain and suffering b) loss of amenity, c) loss of expectation of life, hardship, mental stress, etc., (d) loss of prospect of marriage and under the head pecuniary losses, the tribunal shall consider loss of earning capacity and loss of future earnings as one component apart from medical and other expenses and loss of earning, if any from the date of accident till the date of trial. When loss of earning capacity is compensated as also the non-pecuniary losses under (a) to (d), permanent disability need not be separately itemised."

9. In Raj Kumar v. Ajay Kumar reported in 2011 ACJ1(SC), wherein, Paragraphs 4 to 17, the Supreme Court held as follows: ".General Principles relating to compensation in injury cases:

4. The provision of the Motor Vehicles Act, 1988 ('Act' for short) makes it clear that the award must be just, which means that compensation should, to the extent

possible, fully and adequately restore the claimant to the position prior to the accident. The object of awarding damages is to make good the loss suffered as a result of wrong done as far as money can do so, in a fair, reasonable and equitable manner. The court or tribunal shall have to assess the damages objectively and exclude from consideration any speculation or fancy, though some conjecture with reference to the nature of disability and its consequences, is inevitable. A person is not only to be compensated for the physical injury, but also for the loss which he suffered as a result of such injury. This means that he is to be compensated for his inability to lead a full life, his inability to enjoy those normal amenities which he would have enjoyed but for the injuries, and his inability to earn as much as he used to earn or could have earned. (See *C. K. Subramonia Iyer vs. T. Kunhikuttan Nair* - AIR 1970 SC376 *R. D. Hattangadi vs. Pest Control (India) Ltd.* - 1995 (1) SCC551 and *Baker vs. Willoughby* - 1970 AC467).

5. The heads under which compensation is awarded in personal injury cases are the following: Pecuniary damages (Special Damages) (i) Expenses relating to treatment, hospitalization, medicines, transportation, nourishing food, and miscellaneous expenditure. (ii) Loss of earnings (and other gains) which the injured would have made had he not been injured, comprising: (a) Loss of earning during the period of treatment; (b) Loss of future earnings on account of permanent disability. (iii) Future medical expenses. Non-pecuniary damages (General Damages) (iv) Damages for pain, suffering and trauma as a consequence of the injuries. (v) Loss of amenities (and/or loss of prospects of marriage). (vi) Loss of expectation of life (shortening of normal longevity). In routine personal injury cases, compensation will be awarded only under heads (i), (ii)(a) and (iv). It is only in serious cases of injury, where there is specific medical evidence corroborating the evidence of the claimant, that compensation will be granted under any of the heads (ii)(b), (iii), (v) and (vi) relating to loss of future earnings on account of permanent disability, future medical expenses, loss of amenities (and/or loss of prospects of marriage) and loss of expectation of life. Assessment of pecuniary damages under item (i) and under item (ii)(a) do not pose much difficulty as they involve reimbursement of actuals and are easily ascertainable from the evidence. Award under the head of future medical expenses - item (iii) -- depends upon specific medical evidence regarding need for

further treatment and cost thereof. Assessment of non-pecuniary damages - items (iv), (v) and (vi) -- involves determination of lump sum amounts with reference to circumstances such as age, nature of injury/deprivation/disability suffered by the claimant and the effect thereof on the future life of the claimant. Decision of this Court and High Courts contain necessary guidelines for award under these heads, if necessary. What usually poses some difficulty is the assessment of the loss of future earnings on account of permanent disability - item (ii)(a). We are concerned with that assessment in this case. Assessment of future loss of earnings due to permanent disability

6. 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 accidents 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 ('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.

7. 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%.

8. 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 (see for example, the decisions of this court in *Arvind Kumar Mishra v. New India Assurance Co.Ltd.* - 2010(10) SCALE298 and *Yadava Kumar v. D.M., National*

9. Therefore, the Tribunal has to first decide whether there is any permanent disability and if so the extent of such permanent disability. This means that the tribunal should consider and decide with reference to the evidence: (i) whether the disablement is permanent or temporary; (ii) if the disablement is permanent, whether it is permanent total disablement or permanent partial disablement, (iii) if the disablement percentage is expressed with reference to any specific limb, then the effect of such disablement of the limb on the functioning of the entire body, that is the permanent disability suffered by the person. If the Tribunal concludes that there is no permanent disability then there is no question of proceeding further and determining the loss of future earning capacity. But if the Tribunal concludes that there is permanent disability then it will proceed to ascertain its extent. After the Tribunal ascertains the actual extent of permanent disability of the claimant based on the medical evidence, it has to determine whether such permanent disability has affected or will affect his earning capacity.

10. 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. For example, if the left hand of a claimant is amputated, the permanent physical or functional disablement may be assessed around 60%. If the claimant was a driver or a carpenter, the actual loss of earning capacity may virtually be hundred percent, if he is neither able to drive or do carpentry. On the other hand, if the claimant was a clerk in government service, the loss of his left

hand may not result in loss of employment and he may still be continued as a clerk as he could perform his clerical functions; and in that event the loss of earning capacity will not be 100% as in the case of a driver or carpenter, nor 60% which is the actual physical disability, but far less. In fact, there may not be any need to award any compensation under the head of 'loss of future earnings', if the claimant continues in government service, though he may be awarded compensation under the head of loss of amenities as a consequence of losing his hand. Sometimes the injured claimant may be continued in service, but may not found suitable for discharging the duties attached to the post or job which he was earlier holding, on account of his disability, and may therefore be shifted to some other suitable but lesser post with lesser emoluments, in which case there should be a limited award under the head of loss of future earning capacity, taking note of the reduced earning capacity. It may be noted that when compensation is awarded by treating the loss of future earning capacity as 100% (or even anything more than 50%), the need to award compensation separately under the head of loss of amenities or loss of expectation of life may disappear and as a result, only a token or nominal amount may have to be awarded under the head of loss of amenities or loss of expectation of life, as otherwise there may be a duplication in the award of compensation. Be that as it may.

11. The Tribunal should not be a silent spectator when medical evidence is tendered in regard to the injuries and their effect, in particular the extent of permanent disability. Sections 168 and 169 of the Act make it evident that the Tribunal does not function as a neutral umpire as in a civil suit, but as an active explorer and seeker of truth who is required to 'hold an enquiry into the claim' for determining the 'just compensation'. The Tribunal should therefore take an active role to ascertain the true and correct position so that it can assess the 'just compensation'. While dealing with personal injury cases, the Tribunal should preferably equip itself with a Medical Dictionary and a Handbook for evaluation of permanent physical impairment (for example the Manual for Evaluation of Permanent Physical Impairment for Orthopedic Surgeons, prepared by American Academy of Orthopedic Surgeons or its Indian equivalent or other authorized texts) for understanding the medical evidence and assessing the physical and functional disability. The Tribunal may also keep in view the first schedule to the

Workmen's Compensation Act, 1923 which gives some indication about the extent of permanent disability in different types of injuries, in the case of workmen. If a Doctor giving evidence uses technical medical terms, the Tribunal should instruct him to state in addition, in simple non-medical terms, the nature and the effect of the injury. If a doctor gives evidence about the percentage of permanent disability, the Tribunal has to seek clarification as to whether such percentage of disability is the functional disability with reference to the whole body or whether it is only with reference to a limb. If the percentage of permanent disability is stated with reference to a limb, the Tribunal will have to seek the doctor's opinion as to whether it is possible to deduce the corresponding functional permanent disability with reference to the whole body and if so the percentage.

12. The Tribunal should also act with caution, if it proposed to accept the expert evidence of doctors who did not treat the injured but who give 'ready to use' disability certificates, without proper medical assessment. There are several instances of unscrupulous doctors who without treating the injured, readily giving liberal disability certificates to help the claimants. But where the disability certificates are given by duly constituted Medical Boards, they may be accepted subject to evidence regarding the genuineness of such certificates. The Tribunal may invariably make it a point to require the evidence of the Doctor who treated the injured or who assessed the permanent disability. Mere production of a disability certificate or Discharge Certificate will not be proof of the extent of disability stated therein unless the Doctor who treated the claimant or who medically examined and assessed the extent of disability of claimant, is tendered for cross-examination with reference to the certificate. If the Tribunal is not satisfied with the medical evidence produced by the claimant, it can constitute a Medical Board (from a panel maintained by it in consultation with reputed local Hospitals/Medical Colleges) and refer the claimant to such Medical Board for assessment of the disability.

13. We may now summarise the principles discussed above: (i) All injuries (or permanent disabilities arising from injuries), do not result in loss of earning capacity. (ii) The percentage of permanent disability with reference to the whole body of a person, cannot be assumed to be the percentage of loss of earning

capacity. To put it differently, the percentage of loss of earning capacity is not the same as the percentage of permanent disability (except in a few cases, where the Tribunal on the basis of evidence, concludes that percentage of loss of earning capacity is the same as percentage of permanent disability). (iii) The doctor who treated an injured-claimant or who examined him subsequently to assess the extent of his permanent disability can give evidence only in regard the extent of permanent disability. The loss of earning capacity is something that will have to be assessed by the Tribunal with reference to the evidence in entirety. (iv) The same permanent disability may result in different percentages of loss of earning capacity in different persons, depending upon the nature of profession, occupation or job, age, education and other factors.

14. The assessment of loss of future earnings is explained below with reference to the following illustrations: Illustration `A': The injured, a workman, was aged 30 years and earning Rs.3000/- per month at the time of accident. As per Doctor's evidence, the permanent disability of the limb as a consequence of the injury was 60% and the consequential permanent disability to the person was quantified at 30%. The loss of earning capacity is however assessed by the Tribunal as 15% on the basis of evidence, because the claimant is continued in employment, but in a lower grade. Calculation of compensation will be as follows: a) Annual income before the accident : Rs.36,000/-. b) Loss of future earning per annum (15% of the prior annual income) : Rs. 5400/-. c) Multiplier applicable with reference to age :

17. d) Loss of future earnings : (5400×17) : Rs. 91,800/- Illustration `B': The injured was a driver aged 30 years, earning Rs.3000/- per month. His hand is amputated and his permanent disability is assessed at 60%. He was terminated from his job as he could no longer drive. His chances of getting any other employment was bleak and even if he got any job, the salary was likely to be a pittance. The Tribunal therefore assessed his loss of future earning capacity as 75%. Calculation of compensation will be as follows: a) Annual income prior to the accident : Rs.36,000/-. b) Loss of future earning per annum (75% of the prior annual income) : Rs.27000/-. c) Multiplier applicable with reference to age :

17. d) Loss of future earnings : (27000×17) : Rs. 4,59,000/- Illustration `C': The injured was 25 years and a final year Engineering student. As a result of the accident, he was in coma for two months, his right hand was amputated and vision was affected. The permanent disablement was assessed as 70%. As the injured was incapacitated to pursue his chosen career and as he required the assistance of a servant throughout his life, the loss of future earning capacity was also assessed as 70%. The calculation of compensation will be as follows: a) Minimum annual income he would have got if had been employed as an Engineer : Rs.60,000/- b) Loss of future earning per annum (70% : Rs.42000/- of the expected annual income) c) Multiplier applicable (25 years) :

18. d) Loss of future earnings : (42000×18) : Rs. 7,56,000/- [Note : The figures adopted in illustrations (A) and (B) are hypothetical. The figures in Illustration (C) however are based on actuals taken from the decision in Arvind Kumar Mishra (supra)]..

15. After the insertion of section 163A in the Act (with effect from 14.11.1994), if a claim for compensation is made under that section by an injured alleging disability, and if the quantum of loss of future earning claimed, falls under the second schedule to the Act, the Tribunal may have to apply the following principles laid down in Note (5) of the Second Schedule to the Act to determine compensation :
".5. Disability in non-fatal accidents : The following compensation shall be payable in case of disability to the victim arising out of non-fatal accidents : - Loss of income, if any, for actual period of disablement not exceeding fifty two weeks. PLUS either of the following :- (a) In case of permanent total disablement the amount payable shall be arrived at by multiplying the annual loss of income by the Multiplier applicable to the age on the date of determining the compensation, or (b) In case of permanent partial disablement such percentage of compensation which would have been payable in the case of permanent total disablement as specified under item (a) above. Injuries deemed to result in Permanent Total Disablement/Permanent Partial Disablement and percentage of loss of earning capacity shall be as per Schedule I under Workmen's Compensation Act, 1923."

16. We may in this context refer to the difficulties faced by claimants in securing the presence of busy Surgeons or treating Doctors who treated them, for giving evidence. Most of them are reluctant to appear before Tribunals for obvious reasons either because their entire day is likely to be wasted in attending the Tribunal to give evidence in a single case or because they are not shown any priority in recording evidence or because the claim petition is filed at a place far away from the place where the treatment was given. Many a time, the claimants are reluctant to take coercive steps for summoning the Doctors who treated them, out of respect and gratitude towards them or for fear that if forced to come against their wishes, they may give evidence which may not be very favorable. This forces the injured claimants to approach 'professional' certificate givers whose evidence most of the time is found to be not satisfactory. Tribunals should realize that a busy Surgeon may be able to save ten lives or perform twenty surgeries in the time he spends to attend the Tribunal to give evidence in one accident case. Many busy Surgeons refuse to treat medico-legal cases out of apprehension that their practice and their current patients will suffer, if they have to spend their days in Tribunals giving evidence about past patients. The solution does not lie in coercing the Doctors to attend the Tribunal to give evidence. The solution lies in recognizing the valuable time of Doctors and accommodating them. Firstly, efforts should be made to record the evidence of the treating Doctors on commission, after ascertaining their convenient timings. Secondly, if the Doctors attend the Tribunal for giving evidence, their evidence may be recorded without delay, ensuring that they are not required to wait. Thirdly, the Doctors may be given specific time for attending the Tribunal for giving evidence instead of requiring them to come at 10.30 A.M. or 11.00 A.M. and wait in the Court Hall. Fourthly, in cases where the certificates are not contested by the respondents, they may be marked by consent, thereby dispensing with the oral evidence. These small measures as also any other suitable steps taken to ensure the availability of expert evidence, will ensure assessment of just compensation and will go a long way in demonstrating that Courts/Tribunals show concern for litigants and witnesses. Assessment of compensation.

17. In this case, the Tribunal acted on the disability certificate, but the High Court had reservations about its acceptability as it found that the injured had been

treated in the Government Hospital in Delhi whereas the disability certificate was issued by a District Hospital in the State of Uttar Pradesh. The reason given by the High Court for rejection may not be sound for two reasons. Firstly though the accident occurred in Delhi and the injured claimant was treated in a Delhi Hospital after the accident, as he hailed from Chirori Mandi in the neighbouring District of Ghaziabad in Uttar Pradesh, situated on the outskirts of Delhi, he might have continued the treatment in the place where he resided. Secondly the certificate has been issued by the Chief Medical Officer, Ghaziabad, on the assessment made by the Medical Board which also consisted of an Orthopaedic Surgeon. We are therefore of the view that the High Court ought not to have rejected the said disability certificate."

10. As per the decision of the Full Bench decision of this Court in Cholan Roadways Corporation Ltd., Kumbakonnam vs. Ahmed Thambi and others reported in 2006 (4) CTC433 and Raj Kumar v. Ajay Kumar reported in 2011 ACJ1(SC), the quantum of compensation of Rs.1,72,000/- awarded under the head partial and permanent disability can be apportioned as follows:- (i) As two fractures were evident from medical records, a sum of Rs.80,000/- can be awarded under the head disability, following the judgment in Raj Kumar v. Ajay Kumar reported in 2011 ACJ1(SC) (ii) With 40% disability in the lower limb of the body, one could visualise the loss of amenities, which is explained in Cholan Roadways Corporation Ltd., Kumbakonnam vs. Ahmed Thambi and others reported in 2006 (4) CTC433 Considering the nature of injuries and the extent of disablement, a sum of Rs.25,000/- can be awarded under the head loss of amenities. (iii) Though the injuries were grievous and the respondent/claimant underwent treatment in various hospitals, the Claims Tribunal has failed to award a just and reasonable compensation under the head pain and suffering. A sum of Rs.30,000/- can be awarded under the head pain and suffering. (iv) During the period of hospitalisation, the injured would have taken the assistance of somebody. The Claims Tribunal has failed to award a reasonable compensation under the head, attendant charges. A sum of Rs.7,000/- can be awarded under the head attendant charges. (v) At the time of accident, the injured was stated to be a Heavy Goods Vehicle driver. To prove the same, he has marked Ex.P9-Licence. Ex.P10 and Ex.P11 are the Permit and Registration Certificate of the Taurus

Vehicle bearing registration No.TN-31/J/4201. There are fractures in the iliac wing and superior pubic rami and another injury. Five medical records have been filed to prove the nature of injuries and hospitalisation. Considering the gravity of the fractures and other injuries, for atleast five months, he would have been immobilised. The accident has occurred on 06.10.2008. Admittedly, one of the vehicles involved is a Taurus lorry bearing registration No.TN-31-J-4201, which was a Heavy Goods Vehicle. According to the respondent/claimant, he earned Rs.12,000/- per month. Having regard to the fact, he was a driver, this Court is inclined to fix his monthly income as Rs.6,000/- and the earning capacity during the period of immobilisation would Rs.30,000/- (Rs.6000/- x 5). The apportionment made by this Court is only tentative, which the Claims Tribunal itself, could have done, by following the judgment in Cholan Roadways Corporation Ltd., Kumbakonnam vs. Ahmed Thambi and others reported in 2006 (4) CTC433 and Raj Kumar v. Ajay Kumar reported in 2011 ACJ1(SC). In fine, the quantum of compensation awarded to the respondent/claimant cannot be said to be excessive, considering the extent of disability, assessed with reference to situs and gravity of the injuries.

11. For the reasons stated supra, the only challenge fails and the Civil Miscellaneous Appeal is dismissed. The appellant/Transport Corporation is directed to deposit the award amount, if not already deposited, with costs and with accrued interest at the rate of 7.5% per annum from the date of claim till the date of realisation, less the statutory deposit, to the credit of MCOP.No.40 of 2009 on the file of the Motor Accident Claims Tribunal (Sub Court), Neyveli, within a period of four weeks from today. On such deposit being made, the respondent/claimant is permitted to withdraw the amount with proportionate interest and costs, by making necessary application. Consequently, connected Miscellaneous Petition is closed. No costs. 19.06.2014 Index : Yes/No Internet : Yes/No mra To: The Presiding Officer Motor Accident Claims Tribunal (Sub Court) Neyveli. S.MANIKUMAR,J.

mra C.M.A.No.1833 of 2014 and M.P.No.1 of 2014 (3/3) 19.06.2014

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