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Abdul Vs. The Managing Director,

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Court : Karnataka Dharwad

Decided On : May-27-2022

Judge : Krishna S Dixit and P.Krishna Bhat

Appeal No. : MFA 103835/2016

Appellant : Abdul

Respondent : The Managing Director,

Judgement :

- 1 - R MFA No.103807 of 2016 C/W MFA No.103835 of 2016 IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH DATED THIS THE27H DAY OF MAY, 2022 PRESENT THE HON'BLE MR JUSTICE KRISHNA S.DIXIT AND THE HON'BLE MR JUSTICE P.KRISHNA BHAT MISCELLANEOUS FIRST APPEAL No.103807 OF2016(MV- I) C/W MISCELLANEOUS FIRST APPEAL No.103835 OF 2016 MISCELLANEOUS FIRST APPEAL No.103807 OF 2016 BETWEEN: NEW INDIA ASSURANCE COMPANY LIMITED, BY ITS DIVISIONAL MANAGER, II FLOOR, SHRINATH COMPLEX, NEW COTTON MARKET, HUBBALLI, REPRESENTED BY ITS DULY CONSTITUTED ATTORNEY, THE CHIEF REGIONAL MANAGER, THE NEW INDIA ASSURANCE COMPANY LIMITED, REGIONAL OFFICE, PINTO ROAD, HUBBALLI.-580020 APPELLANT (BY SRI. G N RAICHUR, ADVOCATE) AND:

1. ABDUL S/O MEHABOOB TAHASILDAR, AGE:

39. YEARS, OCC: NIL, R/O: WALVEKAR PLOTS, KESHWAPUR, HUBBALLI-580020 - 2 - MFA No.103807 of 2016 C/W MFA No.103835 of 2016 2. THE MANAGING DIRECTOR N.K.W.R.T.C., CENTRAL OFFICE, GOKUL ROAD, HUBBALLI-580020 3. THE SELF INSURANCE FUND, N.K.W.R.T.C., GOKUL ROAD, CENTRAL OFFICE, HUBBALLI-580020 4. SMT.SHANTABAI W/O SHRISHAIL HATTI, AGE: MAJOR, OCC: OWNER OF TRUCK No.KA-28/A-1988, R/O: AT POST TIDAGURDI, TQ AND DIST: VIJAYAPURA RESPONDENTS (BY SRI. DINESH M KULKARNI, ADV., FOR R1; SRI. S. L. MATTI, ADV., FOR R3; R3 & R4 - NOTICE SERVED) THIS MFA IS FILED U/S.173(1) OF MOTOR VEHICLES ACT, PRAYING TO SET ASIDE THE

JUDGMENT
AND AWARD DATED1709.2016 PASSED IN MVC NO.998/2011 BY THE I-ADDITIONAL SENIOR CIVIL JUDGE AND MEMBER, ADDITIONAL MOTOR ACCIDENT CLAIMS TRIBUNAL, HUBBALLI BY ALLOWING THIS APPEAL. IN MISCELLANEOUS FIRST APPEAL No.103835 OF 2016 BETWEEN: ABDUL S/O MEHABOOB TAHASILDAR, AGE:

39. YEARS, OCC: NIL, R/O: WALVEKAR PLOTS, KESHWAPUR, HUBBALLI, DIST: DHARWAD. APPELLANT (BY SRI. DINESH M KULKARNI, ADVOCATE) - 3 - MFA No.103807 of 2016 C/W MFA No.103835 of 2016 AND:

1. THE MANAGING DIRECTOR, N.K.W.R.T.C. CENTRAL OFFICE, GOKUL ROAD, HUBBALLI, DIST: DHARWAD-580007 2. THE SELF INSURANCE FUND, NWKRTC GOKUL ROAD, HUBBALLI, DIST: DHARWAD-580007 3. SMT.SHANTABAI W/O SHRISHAIL HATTI, AGE: MAJOR, OCC: OWNER OF THE VEHICLE, R/O: AT POST: TIDAGURDI, TQ and DIST: VIJAYAPURA-586101.

4. THE NEW INDIA ASSURANCE CO. LTD., BY ITS DIVISIONAL MANAGER, 2ND FLOOR, SHRINATH COMPLEX, NEW COTTON MARKET, HUBBALLI, DIST DHARWAD -580007. RESPONDENTS (BY SRI. S. L. MATTI, ADV., FOR R1; SRI. G. N. RAICHUR, ADV., FOR R4; R2- NOTICE DISPENSED WITH; R3-NOTICE SERVED) THIS MFA IS FILED U/S1731) OF MOTOR VEHICLES ACT, 1988, AGAINST THE

JUDGMENT

AND AWARD DATED1709.2016 PASSED IN MVC NO.998/2011 ON THE FILE OF THE I- ADDITIONAL SENIOR CIVIL; JUDGE AND MEMBER ADDITIONAL MOTOR ACCIDENT CLAIMS TRIBUNAL, HUBBALLI, PARTLY ALLOWING THE CLAIM PETITION FOR COMPENSATION AND SEEKING ENHANCEMENT OF COMPENSATION.-. 4 - MFA No.103807 of 2016 C/W MFA No.103835 of 2016 THESE MISCELLANEOUS FIRST APPEALS COMING ON FOR ADMISSION, THIS DAY, P.KRISHNA BHAT J., DELIVERED THE FOLLOWING:

JUDGMENT

These two appeals arise out of the judgment and award dated 17.09.2016 in MVC No.998/2011 passed by the I-Additional Senior Civil Judge and Additional M.A.C.T., Hubballi (for short the Tribunal).

2. The brief facts so far as the same are relevant for the present purposes are that on 31.12.2009 at 9.30 p.m., while the claimant, who is appellant in one of the appeals was returning to Hubballi from Kerur in KSRTC Bus bearing registration No.KA-25/F-803, a lorry which was parked partly by the side of the road and partly on the tar portion of the road, having not been clearly sighted, the bus collided against the same and due to the impact, the claimant-appellant suffered grievous injuries. On his presenting a claim petition, respondent Nos. 1 and 2 entered appearance through a common learned advocate and respondent No.4 entered appearance through its - 5 - MFA No.103807 of 2016 C/W MFA No.103835 of 2016 panel counsel. They filed their separate Written Statements denying the material averments in the claim petition.

3. During trial, the claimant examined himself as PW-1 and he also examined a Medical Expert as PW-2. Ex.P-1 to Ex.P-15 were marked for the claimant. Respondents examined two witnesses as RW-1 and RW-2 and Ex.R-1 to Ex.R-4 were marked.

4. Upon hearing the learned counsel on both sides and perusing the records, learned Tribunal allowed the claim petition in part and awarded a compensation of Rs.5,23,000/- with interest thereon at 9% per annum from the date of petition till

the date of realization with liability to pay the same, apportioned in the ratio of 70:30 between respondent Nos.1 & 2 on the one side and respondent Nos.3 and 4 on the other.

5. The insurer of the offending truck is in appeal before us advancing three fold contentions. Firstly, it is - 6 - MFA No.103807 of 2016 C/W MFA No.103835 of 2016 contended that the apportionment of liability to pay compensation on the offending truck to the extent of 30% is wholly against the weight of evidence inasmuch as it was parked by the side of the road and further the NWKRTC bus being a heavy vehicle fitted with bright headlights and therefore, the NWKRTC bus having collided against the stationery truck, the learned Tribunal ought to have fastened the entire liability to pay the compensation on the NWKRTC itself.

6. The second contention of the learned counsel for the insurer of the offending truck is that the learned Tribunal has committed a serious error in awarding interest @ 9% per annum and also in fixing the date of liability to pay the interest on the compensation amount with effect from the date of the claim petition ignoring earlier order of the Tribunal itself dated 21.10.2015 on I.A.No.8, which is to the effect that the liability to pay the interest on the compensation shall commence on the date when the claimant closes his evidence.-. 7 - MFA No.103807 of 2016 C/W MFA No.103835 of 2016 7. His last submission is that the learned Tribunal has fixed the higher notional income for the claimant inasmuch it has proceeded on the premise that he was earning Rs.6,000/- per month, the date of accident being 31.12.2009, whereas as per the chart prepared by the Karnataka State Legal Services Authority, which is being followed throughout the State, the notional income for the year 2009 was only Rs.5,000/- per month. On these contentions, the learned counsel for the Insurance Company of the offending truck submits that his appeal is entitled to be allowed.

8. Learned counsel for the NWKRTC, per contra, contends that the weight of the evidence clearly shows that the offending truck which was stationery was not entirely parked on the road side margin and on the other hand, it was parked partly on the tar portion of the road and the owner of the truck or the insurer has not placed any evidence to show that the parked vehicle was displaying parking lights,

which is mandatory under the - 8 - MFA No.103807 of 2016 C/W MFA No.103835 of 2016 Act and the Rules. He further submitted that the evidence clearly shows that on the date of the accident, it was raining and this also added to the low visibility for the driver of the bus and therefore, the Insurance Company cannot disclaim its liability to pay the compensation as fixed by the learned Tribunal.

9. Learned counsel for the claimant in support of his appeal submits that the learned Tribunal was not properly guided by the principles governing the award of compensation in case of injury and therefore, it has awarded a lower compensation and accordingly, his appeal is entitled to be allowed and enhanced compensation is required to be awarded.

10. We have bestowed our careful consideration to the submissions made on both sides and we have perused the records furnished at the Bar meticulously.

11. Insofar as the contention of the learned counsel for the Insurance Company, which had insured the - 9 - MFA No.103807 of 2016 C/W MFA No.103835 of 2016 offending truck is concerned, the evidence clearly shows that the vehicle was not parked wholly on the margin of the tar road and on the other hand, the evidence further shows that it was partly parked on the tar portion of the road. The Insurance Company or the owner of the offending truck has not placed conclusive evidence to show that the parked vehicle was displaying parking lights, which is mandatory under the Act and the Rules. As an example, we may immediately refer to the recital in the complaint (Ex.P-1) lodged by one of the passengers in the NWKRTC bus. The complaint clearly states that the parking lights were not on display at the time of the accident. The Mahazar (Ex.P2) drawn up soon after the accident also shows that in spite of the fact that the road margin was 8 feet wide, the truck was parked about 2 feet inside the tar road. In that view of the matter, it is impossible for us to disagree with the finding of the learned Tribunal that there is composite negligence on the part of the driver of the offending truck in having parked the same in an improper - 10 - MFA No.103807 of 2016 C/W MFA No.103835 of 2016 manner and therefore, we further agree with the learned Tribunal that the owner of the truck as well as the insurer is liable to pay 30% of the compensation that was determined.

12. In regard to the contention touching the rate of interest awarded is concerned, learned Tribunal has awarded interest @ 9% per annum and having regard to the facts and circumstances, we are not inclined to slash down the same in this case. In regard to the date with effect from which liability to pay interest on the compensation is concerned, learned Tribunal at the instance of the appellant-Insurance Company had entertained I.A.No.8 and on appreciation of contentions advanced before it on both sides, had passed an order on 21.10.2015 directing that interest on the compensation adjudicated shall be liable to be paid with effect from the date on which the claimant closed his evidence. In this case, we do not find any good reason to disagree with the said direction passed by the learned Tribunal; but the - 11 - MFA No.103807 of 2016 C/W MFA No.103835 of 2016 learned Tribunal while ultimately disposing of the matter under the impugned judgment and award has overlooked the said order and has erroneously directed the interest to be paid with effect from the date of the claim petition and not with effect from the later date as it had earlier directed, which is 26.07.2016 and accordingly, we are bound to correct the same. Therefore, we award the rate of interest at 9% per annum with effect from 26.07.2016 only and not with effect from the date on which the claim petition was presented.

13. Now, we are required to deal with the appeal filed by the claimant seeking enhancement of the compensation. Certain foundational facts with regard to assessment of compensation namely the nature of the injury suffered by the claimants cannot be disputed. Claimant had suffered a major fracture. He had sustained open fracture below knee left leg lower 1/3rd. He had also suffered certain other injuries and the fracture necessitated fixing of DCP plates and screws and K-wire - 12 - MFA No.103807 of 2016 C/W MFA No.103835 of 2016 fixation. The learned Tribunal has awarded Rs.30,000/- towards pain and suffering. We find the same inadequate and accordingly having regard to the fact that the fracture was a serious one and it was on the lower limb, we quantify the same at Rs.50,000/-.

14. The records produced during the trial indicate that the claimant was inpatient in various hospitals in separate spells for total period of 49 days. Therefore, he is required to be awarded Rs.15,000/- under the head of nourishment, food,

conveyance expenses and attendant charges.

15. The claimant has produced medical bills to show that he had incurred an amount of Rs.1,90,000/- towards medical expenses and accordingly, we award the same under the said head.

16. The Tribunal assessed the monthly income at Rs.6,000/-. The contention of the learned counsel for the Insurance Company is that though the accident had - 13 - MFA No.103807 of 2016 C/W MFA No.103835 of 2016 occurred in the year 2009, the learned Tribunal has erred in assessing the monthly income of the claimant on notional basis at Rs.6,000/- instead of Rs.5,000/- as per the chart prepared by the Karnataka Legal Services Authority. The learned counsel for the claimant has produced the statement of income and expenditure account (I.T. returns, Ex.P.309) for the year ending 31.03.2009, which shows gross receipt from tailoring business at Rs.3,28,535/- and he had spent Rs.60,000/- towards salary and wages, Rs.3,374/- towards electricity charges and Rs.2,875/- towards telephone charges etc. It further shows that he had spent Rs.82,435/- towards cost of materials purchased (thread, buttons etc.,) for the year ending 31.03.2009. This also shows that the net profit for the year ending 31.03.2009 was Rs.1,47,649/-. Therefore, no exception can be taken for the learned Tribunal arriving at the finding that he was earning at least Rs.6,000/- per month and the contention of the learned counsel for the Insurance Company in this regard cannot be accepted and - 14 - MFA No.103807 of 2016 C/W MFA No.103835 of 2016 we do not find any fault with Tribunal assessing the monthly income of the claimant at Rs.6,000/-.

17. In view the serious fractures suffered by him, he would not have been in a position to engage himself in any gainful activity for at least a period of six months and accordingly for loss of income during the laid up period we award Rs.36,000/- (Rs.6000 x 6000 = Rs.36,000/-).

18. Claimant has spoken about the nature of injury suffered by him and the resultant incapacity suffered by him and also he has produced several medical documents to establish the same. Apart from the same, he has examined PW-2/Medical Expert, who has given evidence and also produced disability certificate (Ex.P-14) issued by him. On careful evaluation of the same, the learned Tribunal

has come to the conclusion that the resultant whole body disability suffered by the claimant is to the extent of 20%. We are in agreement with the said assessment made by the learned Tribunal. The claimant - 15 - MFA No.103807 of 2016 C/W MFA No.103835 of 2016 was aged about 40 years at the time of the accident and therefore, the appropriate multiplier applicable to his case is 15.

19. While assessing the functional disability at 20% for the claimant, we are guided by the decision of the Honble Supreme Court in the matter of RAJ KUMAR v. AJAY KUMAR AND ANOTHER1. Para No.9 to 14 of the said judgment is very instructive for the present purposes and they read as follows: 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 1 (2011) 1 SCC343- 16 - MFA No.103807 of 2016 C/W MFA No.103835 of 2016 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 - 17 - MFA No.103807 of 2016 C/W MFA No.103835 of 2016 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 SCC254: (2010) 3 SCC (Cri) 1258 : (2010) 10 Scale 298]. and Yadava Kumar v. National Insurance Co. Ltd. [(2010) 10 SCC341: (2010) 3 SCC (Cri) 1285 : (2010) 8 Scale 567].) 12. 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; - 18 - MFA No.103807 of 2016 C/W MFA No.103835 of 2016 (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.

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 - 19 - MFA No.103807 of 2016 C/W MFA No.103835 of 2016 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.

14. 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 per cent, 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 be 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. (underlined by us) - 20 - MFA No.103807 of 2016 C/W MFA No.103835 of 2016 20. The learned counsel for the Insurance Company was trenchant in his criticism of the award of compensation made by the learned Tribunal under the head loss of future earning capacity due to disability. He contended that the evidence of PW-2, the Medical Expert, as well as that of claimant is not entitled to be accepted and further on the said basis, it was improper on the part of the learned Tribunal to have come to conclusion that the claimant had indeed suffered loss of future earning capacity due to the disability. Incidentally, he also seriously questioned the extent of physical disability suffered having impact on the assessment of the earning capacity of the claimant made by the learned Tribunal. Learned Tribunal while coming to the conclusion that the claimant had suffered physical disability to the extent of 20% resulting in diminished future earning capacity of the claimant made reference to the nature of the injury suffered by the claimant which in fact is a fracture of the left lower limb and also the evidence of PW-2 touching upon the residual incapacity which lingers in the said limb even after undergoing complete treatment. In spite of vast - 21 - MFA No.103807 of 2016 C/W MFA No.103835 of 2016 progress made by mankind in the field of science and ingenuity of the human mind, he has not, as yet, been able to invent a barometer or establish a scientific method for making an exact estimation with mathematical precision the correlation between the physical disability suffered and impact it would have on his reduced capacity to earn over a period of time in future. Inevitably, therefore, some amount of educated guess work needs to enter this domain.

21. In the background of the contentions advanced by the learned counsel for the Insurance Company, a question now arises as to the guiding philosophy which the learned Tribunals should bear in the inner recesses of mind as the beacon light to determine the appropriate compensation to be awarded under the said head. The materials produced before the learned Tribunal show that the claimant was running a tailoring business, which undeniably requires an able body and more particularly, a fully functional pair of lower limbs. It would be harsh, unrealistic, nay, almost nihilistic on the part of the Tribunal to ignore the - 22 - MFA No.103807 of 2016 C/W MFA No.103835 of 2016 philosophy of the constitution of India in the process of their decision making which sets great store by the dignity of human-

being. The life as encapsulated in the Indian Constitution does not merely view human life as a conglomeration or an assemblage or the cobbling together of the individual constituent parts but as an integrated core which has a purpose, content and dignity. Any disability, therefore, to any limb of the body which has a role to play in the functional-economic sense indubitably causes its effect on the whole body warranting curial intervention in its reparative and recompensing role. An useful observation in this behalf is found in the decision of the Honble Apex Court in the case of JAGDISH v. MOHAN AND OTHERS2, which reads as under: 14. But the measure of compensation must reflect a genuine attempt of the law to restore the dignity of the being. Our yardsticks of compensation should not be so abysmal as to lead one to question whether our law values human life. If it does, as it must, it must provide a realistic recompense for the pain of loss and the trauma 2 (2018) 4 SCC571- 23 - MFA No.103807 of 2016 C/W MFA No.103835 of 2016 of suffering. Awards of compensation are not law's doles. In a discourse of rights, they constitute entitlements under law. Our conversations about law must shift from a paternalistic subordination of the individual to an assertion of enforceable rights as intrinsic to human dignity.

22. The learned counsel for the Insurance Company was vehement in his submission that the component of loss of future prospects can be factored in while awarding compensation under the head of loss of future earning capacity where disability arises due to amputation alone and he was insistent that the ratio of the decision of Constitution Bench of the Honble Supreme Court in National Insurance Company Limited v. Pranay Sethi and others3, in this behalf should be extended only to such cases of personal injury where physical disability has resulted due to amputation of the limbs. The above contention requires to be noticed only to be rejected. 3 (2017) 16 SCC680- 24 - MFA No.103807 of 2016 C/W MFA No.103835 of 2016 23. A catena of decisions emanating from the Honble Supreme Court in SANDEEP KHANUJA vs. ATUL DANDE4, Jagadish v. Mohan and others5 and Erudhaya Priya v. State Express Transport Corporation Limited6 2020 SCC Online SC601 make no such distinction in regard to applicability of loss of future prospects to cases of physical disability resulting in loss of earning capacity from injuries with amputation of the limbs and without amputation of the limbs as was sought to be contended by the learned counsel for the Insurance Company. This

kind of arguments advanced at the bar by the learned counsel appearing for the Insurance Company only brings to sharp relief the urgent need for updation by the learned counsel of the fast changing approach of the law inconsonance with the felt necessities of the time without which the precious time of the Courts will be wasted in needlessly dwelling on the same. 4 (2017) 3 SCC3515 (2018) 4 SCC5716 2020 SCC Online SC601- 25 - MFA No.103807 of 2016 C/W MFA No.103835 of 2016 24. That there is no warrant for such a proposition either in law, or in any recognized principles or on authority is evident from the decision of the Honble Apex Court in Erudhaya Priyas7 case at paragraph Nos. 12 to 14 which reads as follows: 12. In the factual contours of the present case, if we examine the disability certificate, it shows the admission/hospitalization on 8 occasions for various number of days over 1 years from August 2011 to January 2013. The nature of injuries had been set out as under: Nature of injury: (i) compound fracture shaft left humerus (ii) fracture both bones left forearm (iii) compound fracture both bones right forearm (iv) fracture 3rd, 4th & 5th metacarpals right hand (v) subtrochanteric fracture right femur (vi) fracture shaft left femur (vii) fracture both bones left leg

13. We have also perused the photographs annexed to the petition showing the current physical state of the appellant, though it is stated by learned counsel for the respondent State Corporation that the same was not on record in the trial court. Be that as it may, this is the 7 2020 SCC Online SC601- 26 - MFA No.103807 of 2016 C/W MFA No.103835 of 2016 position even after treatment and the nature of injuries itself show their extent. Further, it has been opined in para 12 of Sandeep Khanuja case (supra) that while applying the multiplier method, future prospects on advancement in life and career are also to be taken into consideration.

14. We are, thus, unequivocally of the view that there is merit in the contention of the appellant and the aforesaid principles with regard to future prospects must also be applied in the case of the appellant taking the permanent disability as 31.1%. The quantification of the same on the basis of the judgment in National Insurance Co. Ltd. case (supra), more specifically para 59.3, considering the age of the appellant, would be 50% of the actual salary in the present case.

25. In the above case, before the Supreme Court, appellant did not suffer any amputation of the limbs.

26. What is the true basis for incorporating loss of future prospects in computing compensation under the head of loss of future earning capacity?. Is it because courts have to make a distinction between various classes of injuries resulting in disabilities having a bearing on the earning capacity and thereafter, mark the cases only of disability resulting from amputation of limbs for incorporating an - 27 - MFA No.103807 of 2016 C/W MFA No.103835 of 2016 additional component of loss of future prospects into the computational process of loss of future income?. Our answer is an emphatic No! In an opinion marked by considerable prescience and percipience, Singhvi J.

speaking for a Bench of Supreme Court observed as follows: 14. We find it extremely difficult to fathom any rationale for the observation made in paragraph 24 of the judgment in Sarla Vermas case that where the deceased was self-employed or was on a fixed salary without provision for annual increment, etc., the Courts will usually take only the actual income at the time of death and a departure from this rule should be made only in rare and exceptional cases involving special circumstances. In our view, it will be nave to say that the wages or total emoluments/income of a person who is self-employed or who is employed on a fixed salary without provision for annual increment, etc., would remain the same throughout his life.

15. The rise in the cost of living affects everyone across the board. It does not make any distinction between rich and poor. As a matter of fact, the effect of rise in prices which directly impacts the cost of living is minimal on the rich and maximum on those who are self- employed or who get fixed income/emoluments. They are the worst affected people. Therefore, they put extra efforts to - 28 - MFA No.103807 of 2016 C/W MFA No.103835 of 2016 generate additional income necessary for sustaining their families.

16. The salaries of those employed under the Central and State Governments and their agencies/instrumentalities have been revised from time to time to provide a cushion against the rising prices and provisions have been made for providing

security to the families of the deceased employees. The salaries of those employed in private sectors have also increased manifold. Till about two decades ago, nobody could have imagined that salary of Class IV employee of the Government would be in five figures and total emoluments of those in higher echelons of service will cross the figure of rupees one lakh.

17. Although, the wages/income of those employed in unorganized sectors has not registered a corresponding increase and has not kept pace with the increase in the salaries of the Government employees and those employed in private sectors but it cannot be denied that there has been incremental enhancement in the income of those who are self-employed and even those engaged on daily basis, monthly basis or even seasonal basis. We can take judicial notice of the fact that with a view to meet the challenges posed by high cost of living, the persons falling in the latter category periodically increase the cost of their labour. In this context, it may be useful to give an example of a tailor who earns his livelihood by stitching cloths. If the cost of living increases and the prices of essentials go up, it is but natural for him to increase the cost of his labour. So will be the cases of ordinary skilled - 29 - MFA No.103807 of 2016 C/W MFA No.103835 of 2016 and unskilled labour, like, barber, blacksmith, cobbler, mason etc.

18. Therefore, we do not think that while making the observations in the last three lines of paragraph 24 of Sarla Vermas judgment, the Court had intended to lay down an absolute rule that there will be no addition in the income of a person who is self-employed or who is paid fixed wages. Rather, it would be reasonable to say that a person who is self-employed or is engaged on fixed wages will also get 30 per cent increase in his total income over a period of time and if he/she becomes victim of accident then the same formula deserves to be applied for calculating the amount of compensation. (Santosh Devi v. National Insurance Company Limited and others)8 27. It is thus evident that this component of loss of future prospects is a forensic tool forged by the Supreme Court to off-set the adverse effect of imponderable vagaries of inflation on the assessment of loss of future earning. To link this component only to disability arising from amputation of limbs defies logic and has no sanction of law. It is undoubtedly true that it is no part of the statutory law governing the field of award of compensation in motor 8 (2012) 6 Supreme

Court Cases 421 - 30 - MFA No.103807 of 2016 C/W MFA No.103835 of 2016 vehicle accident cases. But, Courts are enjoined under law to award just compensation and no compensation can be regarded as just unless law is capable of reinventing itself by making proper adjustments as the needs of the time require. Judges some times make law if the statutes made by the Parliament fall short of meeting the requirements of the time.

28. The eminent judge Lord Reid in his lecture The Judge As Law Maker said as under: There was a time when it was thought almost indecent to suggest that judges make law- they only declare it. Those with a taste for fairy tales seem to have thought that in some Aladdins cave there is hidden the Common Law in all its splendour and that on a judges appointment there descends on him knowledge of the magic words Open Sesame. Bad decisions are given when the judge has muddled the pass word and the wrong door opens. But we do not believe in fairy tales anymore.

29. Eminent American jurist Richard Allen Posner was more forthright when he said: (j)udges make rather than find law, and they use as inputs both the rules laid down by legislation and previous - 31 - MFA No.103807 of 2016 C/W MFA No.103835 of 2016 courts. and their own ethical and policy preferences.9

30. Lord Justice Harman put it pithily thus: Equity is not past the age of Child bearing

31. Resultantly we are constrained to reject the contention of Sri. G. N. Raichur, learned counsel for the Insurance Company. Loss of future prospects also has to be factored in notwithstanding the fact that this is not a case of death but a case of injury without amputation resulting in whole body disability to the extent of 20% which ultimately has a bearing on the reduced earning capacity. It is essentially on account of the fact that money value does not remain constant over a long spell of years and thus claimant being aged only 40 years, he has long years ahead of him to look forward to, the sliding value of the money will have adverse impact on his future prospects. Accordingly, having due regard to the fact that he was aged about 40 years at the time of the accident, 9 R.Posner, the problems of Jurisprudence, 457 (1990) - 32 - MFA No.103807 of 2016 C/W MFA No.103835 of

2016 25% of his established income will have to be factored in towards compensation for loss of future prospects. Therefore, loss of earning capacity is recomputed as follows: Rs.6,000/- + 25% (Rs.1,500/-) = Rs.7,500/- Rs.7,500 x 12 x 15 x 20% =Rs.2,70,000/-.

32. Learned Tribunal has awarded separately a sum of Rs.50,000/- under the head of loss of expectation of life and amenities. We may observe that the same is required to be maintained in view of the fact that in Rajakumars10 case, the Honble Supreme Court has directed dispensing with award of compensation on the said head only when the compensation under the head of future loss of earning capacity due to disability assessed is on the footing of disability at a degree higher than 50%. The relevant observation is at paragraph 15 of the said decision, which reads as follows: 15. It may be noted that when compensation is awarded by treating the loss of future earning capacity as 100% 10 (2011) 1 SCC343- 33 - MFA No.103807 of 2016 C/W MFA No.103835 of 2016 (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.

33. Thus, the claimant is entitled to the total compensation as follows: Amount Heads (in Rs.) Towards pain and sufferings 50,000/- Towards loss of earnings along with future 2,70,000/- prospects at 25% of the income (Rs.7,500 x 12 x 15 x 20% = 2,70,000/-) Towards Medical expenses 1,90,000/- Towards loss of income during laid up 36,000/- period (Rs.6,000 x 6 months) Towards loss of expectation of life and 50,000/- amenities Towards food, nourishment, conveyance 15,000/- and attendant charges Total 6,11,000/- - 34 - MFA No.103807 of 2016 C/W MFA No.103835 of 2016 34. In view of the above, the claimant is entitled to total compensation of Rs.6,11,000/- as against Rs.5,23,000/- awarded by the learned Tribunal. The total compensation will carry interest @ 9% per annum with effect from 26.07.2016 i.e., the date of closure of the evidence as against the date of claim petition awarded by the Tribunal.

35. In the result, both appeals are allowed in part.

36. The amount in deposit, if any, shall be transmitted to the jurisdictional Tribunal for disbursement, forthwith. Sd/- JUDGE Sd/- JUDGE YAN

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