2023:APHC:21136

HIGH COURT OF ANDHRA PRADESH

TUESDAY ,THE FOURTH DAY OF JULY

TWO THOUSAND AND TWENTY THREE

PRSENT

THE HONOURABLE SRI JUSTICE DUPPALA VENKATA RAMANA

MOTOR ACCIDENT CIVIL MISCELLANEOUS APPEAL NO: 136 OF 2011

Between:

1. Vellagada Durgaprasada Rao S/o. Kondalarao
   Sound Engineer
   Telaga by Caste
   R/o. Gunuper ward No.10
   Orissa State

...PETITIONER(S)

AND:

1. B. Chiranjeevulu S/o. Dandsai
   Owner of the Trucker Bearing No.AP 30-T-3587
   Chinabahapalli Village
   Mandasa Mandalam,
2. New India Assurance Company Limited rep., by its Divisional Manager
   Opp to Surya Mahal, G.T.Road, Srikakulam.

...RESPONDENTS

Counsel for the Petitioner(s): ARAVALA RAMA RAO

Counsel for the Respondents: NARESH BYRAPANENI

The Court made the following: ORDER

*** THE HON'BLE SRI JUSTICE DUPPALA VENKATA RAMANA**

+ M.A.C.M.A.No. 136 of 2011

% 04.07.2023

Between:

Vellagada Durgaprasadarao,
S/o.Kondalarao, Hindu, Aged 47 years,
Sound Engineer, Telaga by caste,
R/o.Gunuper Ward No.10, Orissa State. ... Appellant

And

1. B.Chiranjeevulu,
S/o.Dandasi, Aged about not known,
Owner of the Trucker bearing No.AP 30 T 3587,
Chinabahapalli Village, Mandasa Mandal.
2. New India Assurance Company Limited,
Represented by its Divisional Manager,
Opposite to Surya Mahal, G.T.Road,
Srikakulam. ... Respondents

DATE OF JUDGMENT PRONOUNCED**: 04.07.2023**

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE DUPPALA VENKATA RAMANA

1. Whether Reporters of Local Newspapers may be allowed to see the judgment? Yes/No
2. Whether the copies of judgment may be marked to Law Reporters / Journals? Yes/No
3. Whether His Lordship wish to see the fair copy of the Judgment? Yes/No

DUPPALA VENKATA RAMANA, J

*** THE HON'BLE SRI JUSTICE DUPPALA VENKATA RAMANA**

+ M.A.C.M.A.No.136 of 2011

% 04.07.2023

Between:

Vellagada Durgaprasadarao,
S/o.Kondalarao, Hindu, Aged 47 years,
Sound Engineer, Telaga by caste,
R/o.Gunuper Ward No.10, Orissa State. ... Appellant

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1. B.Chiranjeevulu,
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   Owner of the Trucker bearing No.AP 30 T 3587,
   Chinabahapalli Village, Mandasa Mandal.
2. New India Assurance Company Limited,
   Represented by its Divisional Manager,
   Opposite to Surya Mahal, G.T.Road,
   Srikakulam. ... Respondents

! Counsel for Appellant : Sri Aravala Ramarao

^ Counsel for 2nd Respondent : Sri Naresh Byrapaneni

< Gist:

> Head Note:

? Cases referred:

1. 2014(2) SCC 735
2. (2002) 6 SCC 455
3. (2011) 13 SCC 236
4. (1965) 1 All ER 563
5. (2013) 8 SCC 389
6. (2022) 8 SCC 489
7. (2011) ACJ 1 (SC)
8. (2012) 8 SCC 604
9. 2009 ACJ 1298 (SC)
10. (2003) 2 SCC 274
11. 2019 ACJ 559 (SC)

This Court made the following:

HON'BLE SRI JUSTICE DUPPALA VENKATA RAMANA

M.A.C.M.A.No.136 of 2011

JUDGMENT:

This appeal has been preferred under Section 173 of Motor Vehicles Act, 1988 (for short "the Act") by the appellant/claimant challenging the judgment and award dated 02.06.2006 delivered by the Motor Accidents Claims Tribunal-cum-II Additional District Judge(Fast Track Court), Srikakulam (for short "the Tribunal") in M.V.O.P.No.228 of 2002 granting compensation of Rs.32,000/- along with interest @ 7.5% per annum from the date of petition till realization to the appellant/claimant on account of the injuries sustained by him in a road traffic accident, against both the respondents jointly and severally.

2. For the sake of convenience, the parties are referred to as they are arrayed before the Tribunal.

3. The brief facts, necessary for adjudication of the case, are that a 43 years old – V.Durga Prasadarao (petitioner) was a Sound and Radio Engineer and was drawing salary of Rs.3,000/- per month at the time of the accident. On 27.01.2000 at 3.00 p.m., the petitioner along with Sasibhushan Patnaik was proceeding on his motorcycle towards their village

and when they reached Haripuram Junction at 4.30 p.m., the Trucker bearing No.AP 30-T-3587 driven by its driver came in an opposite direction in a rash and negligent manner and dashed the motorcycle due to which the petitioner, who is the rider of the motorcycle had fallen and received crush injury to the ankle and all over the body. He was shifted to the Government Hospital, Palasa, for treatment. The matter was reported to the Police alleging that the alleged accident took place as a result of the rash and negligent driving of the said Trucker. Based on the statement given by the petitioner/injured, Mandasa Police registered a case in Crime No.10 of 2000 for the offence under Sections 337 and 338 IPC. After investigation of the case, charge sheet was submitted against the accused-driver (Ch.Venkata Rao) for having committed the offence punishable under Sections 337 and 338 IPC.

(ii) The petitioner/injured filed an application claiming compensation of a sum of Rs.2,50,000/- before the Tribunal on account of the injuries sustained by him in the said accident.

(iii) The 1st respondent filed a written statement contending *inter alia* that the averments of the petition are false. It is further averred that the claims made under various heads are all imaginary figures to gain wrongfully and in fact, the

driver of the offending vehicle was having valid driving licence and the accident took place only due to the rash and negligent driving of the motorcycle by its rider (petitioner). It is further averred that the alleged accident took place in a busy locality and there was no chance to drive the offending vehicle at a high speed. It is further averred that the said Trucker was insured with the 2nd respondent and this respondent is not liable to pay the compensation.

(iv) The 2nd respondent/Insurance Company filed a written statement denying all the allegations made in the petition. It is contended *inter alia* that the driver of the 1st respondent was not having valid driving licence to drive the offending vehicle. Hence, this respondent is not at all liable to pay the compensation. It is further averred that the petitioner and the 1st respondent have to prove that the offending vehicle, which involved in the accident, was covered by a valid insurance policy by the date of the accident, otherwise, this respondent is not liable to pay any compensation. Even if the policy is established, this respondent is not liable to pay the compensation unless it is proved that Section 64 VB of the Insurance Act, 1939 and Rules 58/59 of the Insurance Rules, 1939 are complied with. The petitioner has to prove that he was

aged about 43 years and was working as a Sound Engineer under self-employment and was getting Rs.3,000/- per month etc. It is further averred that the compensation claimed by the petitioner is excessive and prayed to dismiss the petition.

(v) In view of the pleadings of the parties, the Tribunal framed the following issues:

(1) Whether the petitioner received injuries in the motor accident that took place on 27.01.2000 at Ratti road junction, Haripuram on NH-5 road, Mandasa Mandal in which the Trucker bearing No.AP 30 T 3587 owned by the 1st respondent was involved?

(2) Whether the accident in question occurred only due to the rash and negligent driving of the Trucker bearing No.AP 30 T 3587 by its driver?

(3) Whether the petitioner is entitled for compensation?, if so, to what amount and from which of the respondents?

(4) To what relief?

(vi) In order to establish his claim, at the time of enquiry, P.Ws.1 to 3 were got examined and Exs.A.1 to A.13 and Ex.X.1 were got marked on behalf of the petitioner/claimant. No oral evidence was adduced and no documents were marked on behalf of the 1st & 2nd respondents.

(vii) On appreciation of the evidence of P.Ws.1 to 3 and placing reliance on Exs.A.1 to A.13 i.e., Certified copies of FIR,

charge sheet, MVI report, Wound Certificate, Disability Certificate, Medical Bills etc., the learned Tribunal was of the view that the alleged accident occurred due to the collision between two vehicles and the amount of compensation ought to have been reduced by 50% payable to the claimant and passed an award granting compensation of Rs.32,000/- with interest @ 7.5% per annum and costs against the 1st and 2nd respondents from the date of the claim till realization.

(viii) The breakup details of the compensation awarded by the Tribunal, are tabulated hereunder:

S.No.	Heads of compensation	Amount of compensation awarded in Rs.
1	Medical Expenses	15,000/-
2	Pain & Suffering	10,000/-
3	Loss of earnings	9,000/-
4	Incidental expenses	5,000/-
5	Permanent Disability	25,000/-
	Total	**64,000 /-**

(ix) Since the accident occurred due to head-on collision of two vehicles (motorcycle and Trucker), the amount of compensation was reduced by 50% out of Rs.64,000/- payable to the claimant. Accordingly, the Tribunal passed an award granting compensation of Rs.32,000/- as stated *supra.*

(x) Aggrieved by, and dissatisfied with the said award passed by the learned Tribunal, the petitioner/claimant

preferred the present appeal seeking enhancement of compensation.

4. Learned counsel for the petitioner/claimant would submit that, considering the evidence on record, the Tribunal ought to have awarded higher compensation. Further, he would submit that the claimant has preferred the instant appeal on the ground that the findings recorded by the Tribunal are not sustainable in the eye of law and the same suffer from an error apparent on the face of the record. He would further submit that the finding of the learned Tribunal in the matter of contributory negligence is erroneous and the same is liable to be set aside. He would further submit that, in the absence of any evidence to show that the wrongful act on the part of the petitioner contributed either to the accident or to the nature of the injuries sustained, he could not have been held guilty of contributory negligence. Hence, the reduction of 50% towards contributory negligence, is clearly unjustified and the same has to be set aside. He would further submit that the petitioner would have got more compensation than the awarded amount and the amount of compensation awarded by the Tribunal is not justified and called for interference of this Court.

5. Learned Standing Counsel for the 2nd respondent/New India Assurance Company would submit that the Tribunal has rightly assumed the income of the injured and calculated the compensation amount accordingly and therefore, no interference is required by this Court. He further argued that, since it was head-on collision, the learned Tribunal reduced the amount upto to 50% from the compensation. Further, he would submit that the driver of the offending vehicle was not negligent in driving the same. Even if it is held that the driver of the offending vehicle drove the same rash and negligently, then it is a fit case of contributory negligence as it was a head-on collision between the motorcycle and the Trucker. Therefore, the learned Tribunal has found the percentage of negligence as 50% and accordingly, evaluated the compensation amount. He, therefore, prayed to dismiss the appeal.

6. In the light of the above rival arguments, the points for consideration in this appeal are:

> 1. *Whether a finding of contributory negligence is to be arrived at, by appreciating the evidence on record, regarding the aspect whether the claimant or the driver of the Trucker failed to take reasonable care and caused the accident?*
>
> *2. Whether the compensation awarded by the Tribunal is just and reasonable in the facts and circumstances of the case, or requires enhancement?*

POINT No.1:

7. Considered the submissions of the learned counsels, perused and assessed the entire evidence on record including the exhibited documents. A perusal of the impugned award would show that the Tribunal has framed the Issue No.2 as to whether the accident in question occurred only due to rash and negligent driving of the Trucker bearing No.AP 30 T 3587, by its driver, to which, the Tribunal after considering the oral evidence coupled with the documents, gave a finding on Issue No.2 at Page No.4 of the judgment that as it was a case of head-on collision of two vehicles, the amount of compensation has been reduced by 50% payable to the claimant.

8. On perusal of the judgment, this Court is of the view that the Tribunal committed an error in reduction of 50% towards contributory negligence which is clearly unjustified, as there was no evidence on record to show that the wrongful act on the part of the injured contributed either to the accident or to the nature of the injuries sustained by him. The petitioner/injured could not have been held guilty of contributory negligence in cases where the Police attributes the negligence against the driver of one vehicle involved, unless there is any other independent evidence adduced is available to prove the contributory

negligence. The charge sheet was submitted by the Police under Ex.A.2, after the investigation, holding that the driver of the Trucker committed the offence.

9. The Hon'ble Apex Court in **Syed Sadiq & Others Vs. Divisional Manager, United India Insurance Company Limited,**[1] at Para No.29 held as follows:

> ***"29.*** *On the matter of extent of contribution to the accident, it is held by the Tribunal that the appellant claimants herein should have taken utmost care while moving on the highway. Looking at the spot of the accident, the Tribunal concluded that the appellant claimants were moving on the middle of the road which led to the accident. Therefore, the Tribunal concluded that though the tractor has been charge-sheeted under Sections 279 and 338 IPC, but given the facts and circumstances of the case, the appellant claimants also contributed to the accident to the extent of 25%. The High Court without assigning any reason concurred with the findings of the Tribunal with respect to contributory negligence. We find it pertinent to observe that both the Tribunal and the High Court erred in holding the appellant claimants in these appeals liable for contributory negligence. The Tribunal arrived at the above conclusion only on the basis of the fact that the accident took place in the middle of the road in the absence of any evidence to prove the same. Therefore, we are inclined to hold that the contribution of the appellant claimants in the accident is not proved by the respondents by producing evidence and therefore, the finding of the Tribunal regarding contributory*

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[1] 2014 (2) SCC 735

negligence, which has been upheld by the High Court, is set aside."

10. In another decision in **Pramodkumar Rasikbhai Jhaveri Vs. Karmasey Kauvargi Tak and Others**[2], the Hon'ble Apex Court at Para No.11 held as follows:

> ***"11.*** *It is important to note that the respondents did not contend before the Tribunal that there was contributory negligence on the part of the appellant, the driver of the car. There was not even an allegation in the written statement filed by the respondents that the car driver was negligent and the accident occurred as a result of partial negligence of the car driver. …………………….. In this factual situation, the High Court was not justified in holding that there was contributory negligence on the part of the appellant……………."*

11. In view of the principles laid down by the Hon'ble Apex Court, so far as the contributory negligence on the part of the appellant/claimant is concerned, since the criminal case was registered against the driver of the offending vehicle and he did not turn up to explain in what circumstances the accident occurred, a perusal of the evidence adduced by the appellant/claimant reveals that the witnesses examined by the appellant/claimant corroborated the fact in respect of the accident. The offending vehicle driven by its driver

[2] (2002) 6 SCC 455

Ch.Venkatarao was not disputed by the 1st respondent/owner of the offending vehicle. Respondent No.2/Insurance Company did not examine any witnesses to rebut the evidence of the claimant/injured and the documents relating to the criminal case pending against the driver of the offending vehicle and also Ex.A.2/Certified copy of the charge sheet.

12. After going through the said charge sheet, it is apparent that the investigating agency has found that the driver of the Trucker bearing No.AP 30 T 3587 drove the same in a rash and negligent manner and dashed against the motorcycle of the petitioner/injured due to which he sustained injuries. The Tribunal had arrived at a conclusion that it was head-on collision. Unless there is any evidence to show that the head-on collision was due to the contributory negligence of the appellant/claimant or he was driving on the wrong side of the road or did anything wrong, it cannot be held that the accident occurred due to the contributory negligence of the appellant/claimant. In a case of head-on collision, the finding has to be recorded to the effect that the drivers of both the vehicles have to be held responsible to have contributed equally to the accident. In the present case, as stated above, there is no spot map (rough sketch) to establish head-on collision of the

Trucker and the motorcycle. The accident took place in a broad day light at 4.30 p.m. No independent witnesses have been examined by the Insurance Company to establish the plea of the contributory negligence. Merely because that there was a head-on collision, it cannot be presumed that the drivers of both the vehicles were equally responsible for the accident. Therefore, this Court is of the view that the learned Tribunal was not justified in holding that the appellant/claimant is liable for the said accident. The finding of the contributory negligence shall stand set aside.

13. In view of the principles laid down by Hon'ble Apex Court in the above judgments, the findings of the learned Tribunal are found to be contrary to the settled principles of law in respect of the contributory negligence of the appellant/injured. Therefore, in the case on hand, the Tribunal went wrong in fixing the contributory negligence, in the absence of any evidence to show that the wrongful act on the part of the appellant/claimant contributed either to the accident or to the nature of the injuries sustained, the appellant/claimant could not have been held guilty of contributory negligence. Therefore, the reduction of 50% towards contributory negligence is clearly unjustified without support of any convincing and cogent evidence that too

overlooking the Police charge sheet under Ex.A.2. In view of the matter, the finding entered into by the Tribunal fixing 50% contributory negligence against the appellant/petitioner is illegal and the same is accordingly set aside.

POINT No.2:

14. The next question is the quantum of compensation to which the appellant/claimant is entitled to. Before considering the said aspect, it is necessary to set out legal position as emerging from the various judgments of the Hon'ble Supreme Court of India.

15. The Tribunal observed that the offending vehicle was covered with the insurance policy and it was in force at the time of the accident, which is evident from Ex.A.3/Motor Vehicle Inspector's Report. The description of the vehicles incurred in the accident was shown in Column No.5 of Ex.A.3/MVI Report. At Column No.15 - the date of expiry of the insurance, name and address of the Insurance Company, it was mentioned that the Insurance Company's cover note No.25917 (comp) of the New India Assurance Company Limited from 20.03.1999 to 19.03.2000 and in Column No.17 the particulars of the driver's licence was mentioned as DL No.2540/98/SKL/V/L: 21.08.2001, LA/SKL. Though the policy of the vehicle was not

produced by either of the parties, it is evident from Ex.A.3/MVI Report that the insurance policy was in existence as on the date of the accident and the driver of the offending vehicle was possessing valid driving licence till 21.08.2001.

16. The Tribunal, while assessing the compensation payable to the claimant, has not taken into consideration of his monthly earnings, though he pleaded in the claim petition that he was working as a Sound and Radio Engineer and earning Rs.3,000/- per month and he lost his income due to the injuries sustained by him and he was affected with the permanent disability. In support of his contention, he has not produced any documentary proof to show that he was a Sound and Radio Engineer and was earning Rs.3,000/- per month. In the absence of any material evidence, this Court is of the view that the appellant/injured can be treated as a skilled labourer and his monthly income as on the date of the accident has to be taken into consideration, as per the decision of the Hon'ble Apex Court in ***Ramachandrappa Vs. Manager, Royal Sundaram Alliance Insurance Company Limited,***[3] wherein, at Para Nos.13 & 15, it was held as follows:

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[3] (2011) 13 SCC 236

"13. In the instant case, it is not in dispute that the appellant was aged about 35 years and was working as a Coolie and was earning Rs.4500/- per month at the time of accident. This claim is reduced by the Tribunal to a sum of Rs.3000/- only on the assumption that wages of the labourer during the relevant period viz., in the year 2004, was Rs.100/- per day. This assumption in our view has no basis. Before the Tribunal, though Insurance Company was served, it did not choose to appear before the Court nor did it repudiated the claim of the claimant. Therefore, there was no reason for the Tribunal to have reduced the claim of the claimant and determined the monthly earning a sum of Rs.3000/- per month. Secondly, the appellant was working as a Coolie and therefore, we cannot expect him to produce any documentary evidence to substantiate his claim. In the absence of any other evidence contrary to the claim made by the claimant, in our view, in the facts of the present case, the Tribunal should have accepted the claim of the claimant.

14……………

15. In the present case, appellant was working as a Coolie and in and around the date of the accident, the wage of the labourer was between Rs.100/- to Rs.150/- per day or Rs.4500/- per month. In our view, the claim was honest and bonafide and, therefore, there was no reason for the Tribunal to have reduced the monthly earning of the appellant from Rs.4500/- to Rs.3000/- per month. We, therefore, accept his statement that his monthly earning was Rs.4500/".

17. In the instant case, it is crystal clear that the accident occurred in the year 2000. The wages of a labourer was between Rs.100/- to Rs.150/- per day or Rs.3,000/- to Rs.4,500/- per

month. Therefore, following the parameters laid down by the Hon'ble Apex Court in *Ramachandrappa's* case (*supra)*, this Court is of the considered opinion that the appellant/claimant, who claimed himself to be a Sound and Radio Engineer, can be treated as a skilled labourer. But, in the absence of material evidence to that effect, the claimant's notional income can be safely fixed @ Rs.3,000/- per month. In the above judgment, since the accident occurred in the year 2004, the Hon'ble Apex Court has fixed the notional income at Rs.4,500/- per month. Whereas, in the instant case, since the accident occurred in the year 2000, the notional income of the appellant/injured can safely be fixed at Rs.3,000/- per month, which is just and reasonable. There is no reason for the Tribunal for not considering the monthly income of the injured, while determining the compensation.

18. It is a well settled principle that while determining the compensation payable to petitioner/claimant in the claim filed under the Motor Vehicles Act, 1988, this Court referred to the judgment of the Court of Appeal in **Ward Vs. James**[4] Halsbury's Laws of England, 4th Edition, Volume 12 (Page 446) wherein, it was held as follows:

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[4] (1965) 1 All ER 563

> *"When compensation is to be awarded for pain and suffering and loss of amenity of life, the special circumstances of the claimant have to be taken into account including his age, the unusual deprivation he has suffered, the effect thereof on his future life. The amount of compensation for non-pecuniary loss is not easy to determine but the award must reflect that different circumstances have been taken into consideration".*

19. Further, it is relevant to refer to the judgment of the Hon'ble Apex Court in **Rekha Jain Vs. National Insurance Co. Ltd.,**[5] wherein, at Para No.40, it was held as follows:

> *"40. It is well settled principle that in granting compensation for personal injury, injured has to be compensated (1) for pain and suffering (2) for loss of amenities, (3) shortened expectation of life, if any, (4) loss of earnings or loss of earning capacity or in some cases for both, and (5) medical treatment and other special damages".*

20. It is relevant to refer to the judgment of the Hon'ble Apex Court in **Abhimanyu Pratap Singh Vs. Namita Sekhon and another**[6] wherein, at Para Nos.11, 12 and 13 it was held as follows:

> ***11.** In Philipps v. London & South Western Railway Co. [Philipps v. London & South Western Railway Co.,*

[5] (2013) 8 SCC 389

[6] (2022) 8 SCC 489

(1879) LR 5 QBD 78 (CA)] , it was held that by making a payment of compensation for the damages, the court cannot put back again the claimant into his original position. On the date of determination of the compensation, he is being compensated but he cannot sue again, therefore, the compensation must be full and final while determining the same.

12. *In Mediana, In re [Mediana, In re, 1900 AC 113 (HL)] , it is said that the determination for an amount of compensation to the damages is an extreme task. What may be adequate amount for a wrongful act and can it be compensated by money, particularly towards pain and suffering. By an arithmetical calculation, it cannot be decided what may be the exact amount of money which would represent the pain and suffering to a person, but as per recognised principles, damages must be paid.*

13. *In H. West & Son Ltd. v. Shephard [H. West & Son Ltd. v. Shephard, 1964 AC 326 : (1963) 2 WLR 1359 (HL)] , it was held that payment of compensation in terms of money may be awarded so that something tangible may be procured to replace something else of the like nature which has been destroyed or lost. But money cannot renew a physical frame that has been battered and shattered, however the courts must consider to award sums, which may be reasonable. Simultaneously, uniformity in the general method of approach is also required. Thereby, possible comparable injuries can be compensated by comparable awards……….”*

21. If the above judgments are read together, the issue of adequacy and grant of just and reasonable amount of compensation requires consideration is what should be the basis

for determination and what may be reason for awarding such compensation. Applying the uniform methodology for determination of compensation, comparable to the injuries, thereby a person, can lead his life though his physical frame cannot be reversed. In the present case of nature, the learned Tribunal awarded compensation contrary to the Hon'ble Apex Court's judgments, which is not just and reasonable.

22. In the instant case, the injured sustained 40% disability as per Ex.A.13/Disability Certificate dated 28.01.2006 issued by P.W.3-Dr.B.Udaya Kumar, Associate Professor of Orthopedics, K.G.Hospital, Visakhapatnam, and who treated the injured, deposed that on 28.01.2006 he has examined the appellant/claimant and found that he sustained compound dislocation of right ankle and he estimated the disability at 40% and the disability is permanent in nature. He further deposed that he treated the patient from 04.02.2000 to 04.03.2000 at St.Joseph Hospital, Visakhapatnam. He was treated by external fixation on 17.02.2000. Subsequently, skin grafting was done on 26.02.2000. Ex.X.1 is the case sheet and Ex.A.4 is the Wound Certificate. The appellant/injured produced Ex.A.4/Wound Certificate issued by Dr.Jagannadham, Civil Assistant Surgeon, Palasa, who treated the injured. On perusal

of Ex.A.4/Wound Certificate, it is noted the following injuries. 1. Fracture Dislocation of Tibia and Fibula from the ankle joint open crush injury. 2. Lacerated injury 3 cm over right parietal region. He opined that Injury No.1 is grievous and Injury No.2 is simple in nature.

23. A perusal of the evidence of P.W.3 coupled with Ex.A.4/Wound Certificate and Ex.A.13/Disability Certificate, shows that the injured sustained 40% disability. Ex.A.13/disability certificate was issued by P.W.3 but not by the Medical Board. Mere non-issuance of Disability Certificate by the Medical Board, Ex.A.13 cannot be discarded and it can be taken into consideration. So far as the income of the appellant/injured is concerned, the learned Tribunal committed an error while evaluating the future earnings without taking into consideration of his notional income at Rs.3,000/- per month. Therefore, the award passed by the Tribunal needs to be modified under the head of loss of earning capacity by following the judgment of the Hon'ble Apex Court in **Raj Kumar Vs. Ajay Kumar**[7].

24. However, it may be appropriate to mention here, while laying down the legal position with regard to awarding compensation under the Motor Vehicles Act, the case of **Kavita**

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[7] 2011 ACJ 1 (SC)

Vs. Deepak and Others[8] wherein, the Hon'ble Apex Court relied on the judgment in the case of *Raj Kumar (supra),* to award compensation. At this juncture, it is relevant to refer to *Raj Kumar's* case *(supra)* wherein, at Para Nos.4, 5 & 9, it was held as follows:

> *"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 SC 376, R.D.Hattangadi Vs. Pest Control (India) Ltd. – 1995 (1) SCC 551 and Baker Vs. Willoughby – 1970 AC 467)*
>
> *5. The heads under which the compensation need to be awarded in personal injury cases as under:*
>
> *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.*

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[8] (2012) 8 SCC 604

<u>Non-pecuniary damages (General damages):</u>

(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 item (ii)(a) do not pose much difficulty as they involve reimbursement of actual 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. ……….

7. ………..

8. ……….

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."*

25. In the present case, the Tribunal committed an error in not applying the multiplier in view of the principles laid down in **Sarla Verma Vs. Delhi Transport Corporation**[9], wherein, it was held at Para-21, as under:

> *"21. We therefore hold that the multiplier to be used should be as mentioned in column (4) of the Table above (prepared by applying Susamma Thomas, Trilok Chandra and Charlie), which starts with an operative multiplier of 18 (for the age groups of 15 to 20 and 21 to 25 years), reduced by one unit for every five years, that is M-17 for 26 to 30 years, M-16 for 31 to 35 years, M-15 for 36 to 40 years, **M-14 for 41 to 45 years**, and M-13 for 46 to 50 years, then reduced by two units for every five years, that is, M-11 for 51 to 55 years, M-9 for 56 to 60 years, M-7 for 61 to 65 years and M-5 for 66 to 70 years."*

26. The Claims Tribunal committed an illegality in awarding a meager amount of compensation payable to the claimant without following the decisions rendered by the Hon'ble Apex Court stated *supra*.

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[9] *2009 ACJ 1298 (SC)*

27. The Tribunal erred in awarding compensation under various conventional heads. As per the decision in *Raj Kumar* case *(supra)*, loss of future earnings and the loss of earning capacity have to be assessed on the basis of the evidence. The claimant, was a skilled labour by the date of the accident. As per the judgment in *Ramachandrappa's case (supra)*, in my view, the claim was honest and *bona fide*. Therefore, the notional income of the appellant/injured is fixed @ Rs.3,000/- per month as stated supra, at the time of the accident. The Tribunal has failed to consider the appropriate income of the claimant and did not award just and reasonable compensation under different heads. As such, it would be appropriate to consider the quantum by taking a sum of Rs.3,000/- per month as the income of the injured at the time of the accident.

28. The Disability Certificate issued by P.W.3(Doctor) under Ex.A.13 shows 40% disability. But, it was not issued by the Medical Board. There may be variation of 10% not exceeding above. Therefore, it should be taken into consideration of the disability of the appellant at 30%. In view of the suggestion put to P.W.3 by the counsel for the Insurance Company that the appellant/injured cannot move without assistance, but with the help of stick he can walk. Therefore, considering the evidence of

P.W.3 and Ex.A.13/disability certificate, taking 30% disability of the appellant would be just and reasonable. Thus, the calculation of compensation towards loss of future earnings, as per the judgment of the Hon'ble Supreme Court of India in *Raj Kumar's* case will be as follows:

a) Annual income before the accident Rs.36,000/-
b) Loss of future earnings per annum (30% of the prior annual income) .... Rs. 10,800/-
c) Multiplier applicable with reference to age (appellant's age was 43 years at the time of the accident) 14
d) Loss of future earnings (10,800 x 14) Rs.1,51,200/-

29. Therefore, the appellant/claimant is entitled to an amount of **Rs.1,51,200/-** towards loss of future earnings.

30. The Tribunal awarded an amount of Rs.15,000/- towards medical expenses. The Tribunal has committed an error while awarding compensation under Medical Expenses actually which was spent by the claimant. He produced medical bills under Exs.A.6 and A.8 showing that he spent an amount of Rs.63,167/-. The appellant/claimant, who was skilled labour is not supposed to be that much of meticulous so as to maintain the bills for any future use. The claimant has remained in the hospital on two occasions for a total period of more than one

month and he must have incurred more expenses. Therefore, the claimant has been awarded Rs.1,50,000/- towards medical expenses as he sustained crush injury and skin grafting was done by the Doctor while operating the right ankle. Therefore, the appellant is entitled to an amount of Rs.1,50,000/- against Rs.15,000/-. The compensation under the head of medical expenses is enhanced from Rs.15,000/- to **Rs.1,50,000/-.**

31. The Tribunal ought to have awarded compensation towards loss of amenities as the person who is suffering permanent disability at 30% cannot lead a normal life. P.W.3 (Doctor), who treated him, stated that the patient could not walk freely without the help of a stick. The compensation is only the means to grant some support for the loss he suffered with which he is expected to live for the rest of his life. By making a payment of compensation for damages, the Court cannot be put back again the claimant into his original position. On the date of determination of compensation, he is being compensated but he cannot sue again. Therefore, this Court is of the view that **Rs.1,00,000/-** has to be awarded towards the loss of amenities of life.

32. Further, the Tribunal has not awarded any amount towards loss of earnings for the period of treatment. The

accident occurred on 27.01.2000. He underwent treatment as inpatient for one month i.e., from 04.02.2000 to 04.03.2000 and normally the patient was advised two months bed rest because skin grafting was done to the crush injury. Altogether, for three months, he lost his earnings. By taking into consideration the evidence, the loss of earnings for three months (90 days) as stated above, would come to Rs.9,000/- (Rs.3,000 x 3 = Rs.9,000/-). As such, the petitioner/claimant is entitled to an amount of **Rs.9,000/-** under the head of 'loss of earnings'.

33. Apart from that, the amount under another conventional head i.e., Attendant Charges needs to be awarded to the injured, as the Tribunal has not awarded any amount towards attendant charges. Since the injured was hospitalized for one month and he has to take bed rest for two months. As such, the attendant may also loss his earnings for the said period of treatment and bed rest of the injured. Therefore, the petitioner/claimant is entitled to an amount of Rs.9,000/- (Rs.3,000 x 3) towards attendant charges. Hence, an amount of **Rs.9,000/-** towards attendant charges deserves to be granted to the claimant.

34. The Tribunal has not awarded any amount towards extra nourishment and transportation. This Court is of the view that

Rs.25,000/- is sufficient for transportation and extra nourishment.

35. In the instant case, the Tribunal has awarded compensation of Rs.10,000/- towards pain and suffering. It needs to be enhanced to Rs.1,00,000/- as the injured was operated for dislocation of his right ankle and skin grafting was done, definitely he would have suffered a lot. The sufferance of injured cannot be compensated in terms of money. Therefore, the compensation under the head of pain and suffering is enhanced from Rs.10,000/- to **Rs.1,00,000/-**.

36. In *Sarla Verma's* case (supra) the Hon'ble Apex Court, while elaborating the concept of 'just compensation' observed as under:

> *"Just compensation is adequate compensation which is fair and equitable, on the facts and circumstances of the case, to make good the loss suffered as a result of the wrong, as far as money can do so, by applying the well settled principles relating to award of compensation. It is not intended to be a bonanza, largesse or source of profit."*

37. On an overall re-appreciation of the pleadings, material on record and the law laid down by the Hon'ble Supreme Court in the afore-cited decisions, I am of the definite opinion that the appellant/claimant is entitled to enhancement of compensation

as modified and recalculated above and given in the table below for easy reference.

S.No	Name of the Head	Enhanced/Reduced by this Court in Rs.
1	Loss of future earnings	1,51,200/-
2	Medical Expenses & Cost of Medicines	1,50,000/-
3	Loss of amenities	1,00,000/-
4	Loss of earnings during the period of treatment & rest	9,000/-
5	Attendant Charges	9,000/-
6	Transportation & Extra Nourishment	25,000/-
7	Pain & Suffering	1,00,000/-
Total		**5,44,200/-**
(-) Compensation awarded By the Tribunal		32,000/-
Enhanced amount		5,12,200/-

38. As per the decision of the Hon'ble Supreme Court of India in the case of ***Nagappa Vs. Gurudayal Singh and others***[10], under the provisions of the Motor Vehicles Act, 1988, there is no restriction that compensation could be awarded only up to the amount claimed by the claimant. In an appropriate case where from the evidence brought on record, if Tribunal /Court considers that claimant is entitled to get more compensation than claimed, the Tribunal may pass such award. There is no embargo to award compensation more than that

[10] (2003) 2 SCC 274

claimed by the claimant. Rather it is obligatory for the Tribunal and Court to award "just compensation", even if it is in the excess of the amount claimed. The Tribunals are expected to make an award by determining the amount of compensation which should appear to be just and proper. In the present case, the compensation as awarded by the Claims Tribunal, against the background of the facts and circumstances of the case, is not just and reasonable and the claimant is entitled to more compensation though he might not have claimed the same at the time of filing of the claim petition.

39. Therefore, in view of the foregoing discussion, this Court is of the opinion that the award passed by the Tribunal warrants interference and thereby enhanced the compensation from Rs.32,000/- to Rs.5,44,200/-.

40. **Resultantly**, the appeal is allowed with costs and the compensation amount is enhanced from Rs.32,000/- to Rs.5,44,200/- along with interest @ 7.5% per annum from the date of filing of the claim petition till the date of realization, against the Respondents 1 and 2 jointly and severally.

(ii) Respondents 1 and 2 are directed to deposit the compensation amount within two months from the date of this

judgment, failing which execution can be taken out against them.

(iii) The appellant/claimant is directed to pay the requisite Court-fee in respect of the enhanced amount awarded over and above the compensation claimed (As per the judgment of Hon'ble Apex Court in **Ramla Vs. National Insurance Company Limited[11])**.

(iv) On such deposit, the claimant is permitted to withdraw the entire amount with accrued interest and costs, by filing a proper application before the Tribunal.

(v) The impugned award of the learned Tribunal stands modified to the aforesaid extent and in the terms and directions as above.

(vi) The record be sent back to the Tribunal within three weeks from this day.

(vii) As a sequel, interlocutory applications pending for consideration, if any, shall stand closed.

JUSTICE DUPPALA VENKATA RAMANA

04.07.2023
Dinesh
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HON'BLE SRI JUSTICE DUPPALA VENKATA RAMANA

M.A.C.M.A.No.136 OF 2011

04.07.2023

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