

(2008) 12 SC CK 0134

In the Supreme Court Of India

Case No : Civil Appeal No. 7430 of 2008 (Arising out of SLP (C) No. 2489 of 2007)

Asraf Alli

APPELLANT

Vs

Naveen Hotels Ltd. and Another

RESPONDENT

Date of Decision : 19-12-2008

Acts Referred:

Motor Vehicles Act, 1988 — Section 173

Citation : (2009) ACJ 663 : (2009) AWC 806 Supp : (2009) 9 KarLJ 51 : (2009) 3 KCCR 1729 : (2009) 3 LW 934 : (2009) 4 MhLj 739 : (2009) MPLJ 564 : (2009) 1 SCALE 396 : (2009) 2 SCC 755

Hon'ble Judges : S. B. Sinha, J;Cyriac Joseph, J

Bench : Division Bench

Advocate : Kiran Suri, for the Appellant; A.K. Raina and Anil Kumar Jha, for the Respondent

Final Decision : Allowed

Judgement

S.B. Sinha, J.—Leave granted.

2. The claimant before the Motor Accident Claims Tribunal (for short "the Tribunal") is before us aggrieved by and dissatisfied with a judgment and order dated 12.7.2006 passed by the High Court of Karnataka at Bangalore whereby and where under it allowed an appeal preferred by Respondent No. 2, Insurance Company, in part, reducing the amount of compensation towards loss of future earning from Rs. 4,53,600/- to Rs. 67,500/-.

3. Appellant was aged 15 years when he met with an accident on 14.9.1998 as a result whereof he sustained serious injuries and suffered permanent disability to the extent of 70% of his left lower limb which had to be amputated.

Before the Tribunal, several witnesses, namely, PW1 to PW5 were examined to prove that at the material time, appellant had been running a poultry farm independently. A large number of documents being Exhibit P.1 to Exhibit P.16

were also brought on record.

The learned Judge of the Tribunal, relying on or on the basis of the said materials brought on record by the appellant, held :

Thus, it is evident from the oral evidence of PW3, coupled with documentary evidence that the petitioner by virtue of accident, has suffered permanent physical disability amounting to 70% on account of amputation of his left lower limb. PW2 Fakruddin Nadaf, Proprietor of poultry farm has stated in his evidence that the petitioner has undergone training to run poultry farm as his assistant. Exh.P-8 certificate issued by him, further speaks that petitioner is capable of running poultry farm independently. Eh.P-20 are the vouchers in favour of the petitioner for having purchased the birds from time to time and the feeds purchased there under. Thus, from the evidence of PW2, coupled with Exh.P-8 to P-10, it is evident that the petitioner was running poultry farm. According to the petitioner he was earning Rs. 5000-00 per month. Taking into consideration the age, date of accident and the avocation undertaken by the petitioner, I consider his monthly earnings at Rs. 3,000/- as against Rs. 5,000/- claimed by the petitioner. Since the disability suffered by the petitioner is 70% on account of amputation of left lower limb, loss of earnings per month will be $\text{Rs. } 3000 \times 70/100 = \text{Rs. } 2100/-$ and for 12 months it will be $\text{Rs. } 2100 \times 12 = \text{Rs. } 25,200/-$. Since the petitioner was aged 15 years, the proper multiplier as reported in ILR 1996 Kar. on page No. 2127 will be 18. Hence, $\text{Rs. } 25,200/- \times 18 = \text{Rs. } 4,53,600/-$ and that will be net loss of earnings and I award that amount for the same.

4. An appeal was preferred thereagainst by the owner of the vehicle, i.e., Respondent No. 1 and Respondent No. 2 jointly. Later on, however, the Respondent No. 1 was relegated to the position of the respondent in the said appeal.

The High Court, by reason of the impugned judgment, reduced the amount of compensation under the head 'loss of future income', stating :

By taking note of the aforesaid judgment of this Court and the submission of the learned Counsel for the insured in so far as the "loss of future earning capacity" is concerned, the Tribunal could not have taken the notional income at Rs. 3,000/-, but it should have been taken at Rs. 15,000/- per annum and based on such figure, if we work out, the "loss of future earning capacity" comes to Rs. 67,500/- and this we substitute in the place of Rs. 4,53,600/-.

5. Ms. Kiran Suri, learned Counsel appearing for the appellant, would contend that the High Court ignored the fact that the appellant, although minor at the relevant time, had been running a poultry farm and as his monthly income could be assessed by the Tribunal at Rs. 3,000/- per month and, thus, the High Court committed a serious error in computing the same at Rs. 15,000/- per annum. It was urged that the loss of future earning capacity has wrongly been calculated at Rs. 67,500/- and even on the said basis the amount of compensation should

have been calculated t Rs. 1,80,000/-.

6. Mr. A.K. Raina, learned Counsel appearing on behalf of Respondent No. 1, however, would submit that appellant being a minor, the High Court has rightly refused to hold that he has been able to establish that his income at Rs. 3,000/- per month.

7. The fact that an accident had taken place on 14.9.1998 is not in dispute. It is also not in dispute that in the said accident appellant had suffered grievous injuries.

PW3, Dr. Basavaraj Dodamani, in his evidence stated that appellant had been walking with the help of crutches and his left lower limb had been amputated below knee with 3" stump but there was an old scar on right heel and it was on that basis the disability of the appellant was calculated at 70% in respect of lower limb.

8. In computing the amount of compensation, the court may in a given case take the benefit of the structured formula as envisaged in the table appended to the Second Schedule of the Motor Vehicles Act, 1988, Note 5 whereof reads as under :

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.

9. Appellant was admitted as an indoor patient on 25.9.1998 and was discharged on 26.10.1998. If the principle akin to the Second Schedule appended to the 1988 Act is to be applied, the learned Tribunal must be held to have applied the same correctly. The High Court has not assigned any reason in support of its judgment. It did not enter into the correctness of the the findings of fact arrived at by the Tribunal in regard to the income of the deceased. The Tribunal held that the income of the appellant was Rs. 3,000/- per month not on a notional basis but on actual basis. The High Court, in exercise of its jurisdiction u/s 173 of the Act either could have affirmed the said finding or reversed the same but for the said purpose it was required to consider the merit of the matter. The High Court,

in our opinion, has proceeded on a wrong premise that the Tribunal had fixed the income of the appellant at Rs. 3,000/- per month on a notional basis.

10. However, if the Second Schedule appended to the Act is to be applied, the correct multiplier in the case of the appellant, he being aged about 15 years, was 15 and not 18.

11. Item (19) of Part II of Schedule I of the Workmen's Compensation Act, 1923 provides for list of injuries, deemed to result in permanent partial disablement, which reads, thus :

(19) Amputation below middle thigh to 8.89 cms. below knee 60%

Hence, the 'percentage of loss of earning capacity' should be treated as 60% of the monthly income instead of 70% as treated by the Tribunal.

In that view of the matter, the total amount of compensation payable to the appellant under the head 'loss of future earning capacity' would be Rs. 3,24,000/- (Rupees three lac twenty four thousand only), the annual income being Rs. 21,600/- and the multiplier being 15.

12. The appeal is allowed to the aforementioned extent. In the facts and circumstances of the case, however, there shall be no order as to costs.