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**(2004) 03 MP CK 0045**

**In the Madhya Pradesh High Court**

**Case No :** Miscellaneous Appeal No. 400/98 and M.A. No's. 403/98, 317 and 318 of 2000

Kamal Kumar Jain

APPELLANT

Vs

Tazuddin and Others

RESPONDENT

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**Date of Decision :** 22-03-2004

**Acts Referred:**

Motor Vehicles Act, 1988 — Section 140, 142, 163A, 168(1)  
Workmens Compensation Act, 1923 — Section 2(1), 4

**Citation :** (2004) 3 ACC 79 : (2004) ACJ 1191 : AIR 2004 MP 212 : (2004) 1 JLJ 298 : (2005) 1 LLJ 507 : (2004) 2 MPHT 386 : (2004) 1 MPJR 426 : (2004) 2 MPLJ 472

**Hon'ble Judges :** Subhash Samvatsar, J;S.S. Jha, J;Chandresh Bhushan, J

**Bench :** Full Bench

**Advocate :** R.D. Jain, in M.A. Nos. 400 and 403/1998 and D.P.S. Bhadoriya, in M.A. No. 400/1998; K.N. Gupta, in M.A. Nos. 403/1998 and 317 and 318/2000, for the Appellant; M.P. Agrawal, for the Respondent No. 2-Insurance Company in M.A. Nos. 400/1998, 403/1998 for Respondent No. 1 and 318/2000 for Respondent No. 2; S. Gajendragadkar, for the Respondent Nos. 2 and 3 in M.A. No. 403/1998; R.V. Sharma, for the Respondent No. 2 in M.A. No. 317/2000, for the Respondent

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**Judgement**

S.S. Jha, J.

This is a reference by the Division Bench on the following question on account of conflicting decisions between two Division Benches of this Court :--

"Whether the fracture of bones in a motor accident can be called privation of any member or joint and whether fracture of a bone simpliciter (without there being any permanent impairment or any weakness of body on account of it), would amount to a permanent disability within the meaning of "permanent disability" defined u/s 142 of the Motor Vehicles Act, 1988?"

Section 142 of the Act is reproduced below :--

Permanent disablement.-- For the purposes of this Chapter, permanent disablement of a person shall be deemed to have resulted from an accident of the nature referred to in subsection (1) of Section 140 if such person has suffered by reason of the accident, any injury or injuries involving-

- (a) permanent privation of the sight of either eye or the hearing of either ear, or privation of any member or joint; or
- (b) destruction or permanent impairing of the powers of any member or joint; or
- (c) permanent disfigurement of the head or face."

It may be mentioned that Section 142 of the Motor Vehicles Act (hereinafter, referred to as the "Act") is exclusively for the purposes of Chapter X of the Act for interim compensation for no fault liability u/s 140 of the Act.

In this case, claimant has suffered fracture in a motor accident and he claimed that he has suffered permanent disability.

Counsel for the claimant submitted that in the case of Saurabh Kumar Shukla v. Hukum Chand and Ors. [1998 (1) JLJ 189], it has been held by the Division Bench that u/s 142 of the Act, injury resulting in fracture of bones simpliciter will not be a permanent disability and on prima facie satisfaction if simple fracture does not show any permanent disability as defined in Section 142 claimant is not entitled to get compensation. In another Division Bench judgment in the case of Mool Chand Vs. S.S. Parihar and Others, femur and shaft were operated upon and steel plates with Richard Screws and 13 other screws were fixed for the reunion of the fractured bones. Division Bench held that it can not be said that if merely because the fracture has been reunited claimant has not suffered permanent disability.

Counsel for the insurance company submitted that the words "privation of member" are confined to Section 142 of the Act, i.e., for interim compensation, but while determining final compensation, Court has to record its finding from the evidence on record. If the claimant has proved permanent disability in the evidence or the percentage of permanent partial disability, then the claimant is entitled for compensation on account of permanent or partial disability. Counsel for the insurance company submitted that the later judgment in the case of Mool Chand (supra) is the correct judgment, whereas earlier judgment in the case of Saurabh Kumar Shukla (supra) is limited to Section 142 of the Act.

Counsel for the claimant contended that when the nature of disablement is proved by the medical report as well as by evidence of doctor, Claims Tribunal has no option but to accept the deposition of the medical expert regarding percentage of disability. Counsel for the insurance company submitted that any bald statement of the doctor about the percentage of loss of disability without performing scientific tests as to disability suffered by the injured is inadmissible in evidence. Until and unless nature of injury is proved and the disability is determined after performing scientific tests oral evidence of the expert is not

reliable.

Counsel for the claimant further submitted that for the purposes of Section 163A of the Act, Schedule for compensation has been prepared. Para 5 of the Schedule relates to disability in non-fatal accidents. He submitted that on perusal of Para 5, it is clear that in case of injuries nature of injuries are of two types, i.e., grievous injuries and non-grievous injuries. Thereafter, disability due to grievous injuries is required to be determined. Disability is of two types : permanent total disablement and permanent partial disablement; and for temporary disablement compensation can be awarded for loss of income for period not exceeding 52 weeks. He submitted that after grievous injury disability is of three kinds viz., (i) temporary disablement which may extend to fifty two weeks; (ii) permanent disablement; and (iii) permanent partial disablement. Para 5 further provides that 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. He submitted that percentage of disablement shall not be more than Schedule I of the Workmen's Compensation Act. Counsel for the insurance company has taken the Court through various provisions of Workmen's Compensation Act and submitted that percentage of disablement should be determined on the basis of Schedule I of the Workmen's Compensation Act and the Court should not accept bald statement of the doctor regarding permanent/partial disablement. Counsel for the insurance company submitted that in the absence of clear directions, doctors appear in Court and depose about the percentage of disability and issue certificates without performing any tests or assigning any reason for determining the percentage of loss to the body after the injury. Such evidence should not be accepted and the Court should rely upon Schedule of the Workmen's Compensation Act to determine the percentage of partial disability or permanent disability.

We have heard Counsel for the parties. Question involved in all the cases is whether fracture of bones in a motor accident will amount to privation of any member or joint and would amount to permanent disability as defined in Section 142 of the Act. We may mention here that Section 142 is limited to Chapter X only. Mere fracture of bones and its re-union will not be sufficient to determine nature of disability unless determined by performing scientific test.

Schedule I of the Workmen's Compensation Act relates to injuries under Sections 2(1) and 4 of the Workmen's Compensation Act. Schedule I Part I relates to 100 per cent loss of earning capacity in the cases of permanent total disablement. Part II relates to injuries deemed to result in permanent partial disablement. In the Schedule, 48 types of injuries causing permanent and partial disablement pertaining to different parts of body are mentioned. Note is appended below the Schedule which mentions that complete and permanent loss of the use of any limb or member referred to in this Schedule shall be deemed to be the equivalent to the loss of that limb or member. Note is clear where there is permanent loss of use of limb, disability will be 100 per cent and the injuries of

permanent loss of those limbs which fall in Part I of the Schedule. However, percentage of loss shall not be higher than what has been mentioned in Para II regarding partial disablement. In the cases of complete and partial loss of use of any limb or member, it will amount to loss of use of that limb or member. Thus, the Legislature's intent is clear and Court should determine percentage of loss of earning capacity from the nature of injuries mentioned in the Schedule. Even otherwise, doctor's statement determining the loss of disability should be based upon scientific tests. If no scientific tests are conducted, then the Court may safely record the percentage of disability from Schedule I of the Workmen's Compensation Act. Percentage of loss determined in the Schedule of Workmen's Compensation Act will be sufficient to determine the nature of disability and amount of compensation can be calculated by applying the multiplier mentioned in the schedule u/s 163A of the Act. It may be mentioned that mere fracture of bones and its re-union will not amount to permanent total disablement or permanent partial disablement, unless the doctor has examined the claimant and assessed the percentage of disability after performing scientific tests. Without performing scientific tests bald statement of the doctor and certificate is inadmissible in evidence. Visual opinion of doctor has no evidentiary value. Claims Tribunals, therefore, must assign reasons in arriving at the conclusion about the percentage of loss of income in the case of permanent partial disablement. Therefore, for determining the nature of permanent disability, there must be sufficient evidence on record to determine total or partial disablement. In the absence of evidence regarding scientific tests to determine the percentage of disability, Claims Tribunals should take guidance from the Schedule of Workmen's Compensation Act to determine the percentage of loss and shall apply multiplier on the basis of loss of income of the injured.

We, therefore, answer the reference as under :--

that fracture of bone simpliciter in an accident through a motor vehicle can not be termed as privation of any member or joint, unless it is proved by the medical evidence that after union of bones disability has occurred or on account of mal-union injury has suffered permanent/partial disability. In the absence of any evidence, each fracture can not be termed as privation of any member or joint. However, fracture in a joint where union of bones is not possible or where union of bone may cause permanent/partial disability, then interim compensation u/s 140 of the Act can be awarded.

We may further add that in other cases for the purposes of permanent disability, Claims Tribunal has to record findings, at the time of final adjudication of the case, and loss of income should be determined on the basis of evidence on record. If the evidence about permanent or partial disability is insufficient, the Courts can certainly refer to the Schedule of Workmen's Compensation Act to determine loss of earning capacity or percentage of loss of partial disability or permanent disability, as the case may be, and determine the quantum of compensation.

Reference is answered accordingly. We direct that the appeals be listed before Division Bench for decision on merit.