

(2012) 08 AHC CK 0268
In the Allahabad High Court
Case No : F.A.F.O. No. 2102 of 2005

Ram Avtar Raikwar

APPELLANT

Vs

Ram Pyare Tiwari @ Chunu Badwa Tiwari and Others

RESPONDENT

Date of Decision : 22-08-2012

Acts Referred:

Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 — Section 2(i)

Citation : (2013) 2 ACC 151 : (2012) 6 AWC 6385

Hon'ble Judges : Rakesh Tiwari, J; Anil Kumar Sharma, J

Bench : Division Bench

Advocate : R.K. Porwal and Punit Kumar Gupta, for the Appellant;

Final Decision : Dismissed

Judgement

Rakesh Tiwari and Anil Kumar Sharma, JJ.—The appellant has approached this Court in this appeal for enhancement of the compensation awarded to him by Motor Accident Claims Tribunal/Special Judge (S.C./S.T. Act), Banda vide award dated 11.5.2005 in Motor Accident Claim Petition No. 119/70 of 2001, whereby compensation of Rs. 10,795.90 together with pendente lite simple interest @ 8% per annum was awarded. We have heard Sri R. K. Porwal, advocate holding brief of Sri Punit Kumar Gupta, advocate, appearing for the appellant, and carefully perused the impugned award.

2. Learned counsel for the appellant has vehemently argued that the Tribunal has illegally discarded the disability certificate issued by the Chief Medical Officer, Banda, wherein permanent disability to the extent of 40% of the appellant was held, so the award is bad in the eye of law and amount of compensation awarded to the appellant need enhancement.

3. It appears that in an accident on 29.5.2001 at about 8.15 p.m., the driver of the Tractor, Registration No. U. P.-90A-4957, driving the vehicle rashly and negligently hit in the left leg of the complainant. In the accident, he suffered

fracture in the left leg. The report of accident was lodged by the son of the appellant on 2.6.2001 in Police Station-Kotwali Nagar, Banda. It was alleged that on account of fracture in left leg, the injured has suffered permanent disability and is unable to pursue his daily chores as also his business. The claim petition for an award of Rs. 4,25,000 was filed against the owner, driver and insurer of the aforesaid tractor. The opposite parties in their written statements, denied the factum of accident. The insurance-company inter alia pleaded breach of insurance of contract. In support of his claim, the appellant examined himself as P.W. 1 and has also examined his son Kishor Kumar Raikwar P.W. 2, Dr. T. R. Sarsaiya, P.W. 3 and Kailash, as P.W. 4. The opposite party No. 1 Ram Pyare (owner of the tractor) examined himself as D.W. 1. Before the Tribunal photocopy of alleged disability certificate of the appellant issued by the Chief Medical Officer, Banda was filed and it was sought to be proved through the statement of Dr. T. R. Sarsaiya, P.W. 3.

4. Learned counsel for the appellant has argued that Dr. T. R. Sarsaiya was Orthopaedic Surgeon in District Hospital, Banda and was also signatory of disability certificate and the learned Tribunal has grossly erred in discarding his evidence and the disability certificate. No plausible explanation could be given on behalf of the appellant why the original disability certificate allegedly issued by the Chief Medical Officer, Banda was not filed, Photostat copy of document cannot be proved by any person, may be, signatory thereof unless original is produced before the Court or the Tribunal at the time of his examination so that adversary party may be able to cross-examine such witness.

5. In the case of Raj Kumar Vs. Ajay Kumar and Another, the Apex Court has highlighted the factors to be considered while deciding a case of permanent disability etc. In paras 6 to 8 of the report the Hon''ble Court has observed as under:

6. Disability refers to any restriction or lack of ability to perform an activity in the manner considered normal for a human-being. Permanent disability refers to the residuary incapacity or loss of use of some part of the body, found existing at the end of the period of treatment and recuperation, after achieving the maximum bodily improvement or recovery which is likely to remain for the remainder life of the injured. Temporary disability refers to the incapacity or loss of use of some part of the body on account of the injury, which will cease to exist at the end of the period of treatment and recuperation. Permanent disability can be either partial or total. Partial permanent disability refers to a person's inability to perform all the duties and bodily functions that he could perform before the accident, though he is able to perform some of them and is still able to engage in some gainful activity. Total permanent disability refers to a person's inability to perform any avocation or employment related activities as a result of the accident. The permanent disabilities that may arise from motor accident injuries, are of a much wide range when compared to the physical disabilities which are enumerated in the Persons with Disabilities (Equal Opportunities Protection of

Rights and Full Participation) Act, 1995 ("Disabilities Act" for short). But if any of the disabilities enumerated in Section 2(i) of the Disabilities Act are the result of injuries sustained in a motor accident, they can be permanent disabilities for the purpose of claiming compensation.

7. The percentage of permanent disability is expressed by the Doctors with reference to the whole body, or more often than not, with reference to a particular limb. When a disability certificate states that the injured has suffered permanent disability to an extent of 45% of the left lower limb, it is not the same as 45% permanent disability with reference to the whole body. The extent of disability of a limb (on part of the body) expressed in terms of a percentage of the total functions of that limb, obviously cannot be assumed to be the extent of disability of the whole body. If there is 60% permanent disability of the right hand and 80% permanent disability of left leg, it does not mean that the extent of permanent disability with reference to the whole body is 140% (that is 80% plus 60%). If different parts of the body have suffered different percentages of disabilities, the sum total thereof expressed in terms of the permanent disability with reference to the whole body, cannot obviously exceed 100%.

8. Where the claimant suffers a permanent disability as a result of injuries, the assessment of compensation under the head of loss of future earnings, would depend upon the effect and impact of such permanent disability on his earning capacity. The Tribunal should not mechanically apply the percentage of permanent disability as the percentage of economic loss or loss of earning capacity. In most of the cases, the percentage of economic loss, that is, percentage of loss of earning capacity, arising from a permanent disability will be different from the percentage of permanent disability. Some Tribunals wrongly assume that in all cases, a particular extent (percentage) of permanent disability would result in a corresponding loss of earning capacity, and consequently, if the evidence produced show 45% as the permanent disability, will hold that there is 45% loss of future earning capacity. In most of the cases, equating the extent (percentage) of loss of earning capacity to the extent (percentage) of permanent disability will result in award of either too low or too high a compensation. What requires to be assessed by the Tribunal is the effect of the permanently disability on the earning capacity of the injured ; and after assessing the loss of earning capacity in terms of a percentage of the income, it has to be quantified in terms of money, to arrive at the future loss of earnings (by applying the standard multiplier method used to determine loss of dependency). We may however note that in some cases, on appreciation of evidence and assessment, the Tribunal may find that percentage of loss of earning capacity as a result of the permanent disability, is approximately the same as the percentage of permanent disability in which case, of course, the Tribunal will adopt the said percentage for determination of compensation (see for example, the decisions of this Court in Arvind Kumar Mishra Vs. New India Assurance Co. Ltd. and Another, and Yadava Kumar Vs. The Divisional Manager, National Insurance Co. Ltd. and Another, : Yadava Kumar Vs. The Divisional Manager, National Insurance Co. Ltd. and

Another, : Yadava Kumar Vs. The Divisional Manager, National Insurance Co. Ltd.
and Another,

6. A perusal of the award shows that the appellant suffered only simple fracture in his left leg. It is important to note that in claim petition, it was alleged that Injured suffered fracture in left leg while in disability certificate the doctor has noted the disability of right leg of the appellant. This important contradiction forced the Tribunal to hold that disability certificate has been surreptitiously obtained. Learned counsel for the appellant has tried to explain the discrepancy by saying that inadvertently instead of injury in left leg, right leg injury has been noted by the doctor. Had it been so, it was duty of the claimant to clarify this ambiguity through cogent and reliable evidence before the Tribunal. The claimant did not undergo any surgery nor any implant was fixed by Orthopaedic Surgeon through opened reduction. In the facts and circumstances of the case, we find that the learned Tribunal has rightly discarded the photo-stat copy of alleged disability certificate of the appellant.

7. The evidence led by the claimant shows that only a sum of Rs. 794,90 were spent in his medical treatment in District Hospital, Banda. The Tribunal has awarded a sum of Rs. 5,000 for pain and sufferings and Rs. 5,000 for nutritional diet. Considering the nature of injury, in our opinion, the award of compensation towards nutritional diet is on higher side. In view of aforesaid discussion, we find that considering the nature of injury of the appellant, the Tribunal has awarded just and reasonable compensation to him and the impugned award does not require any interference by this Court. Thus, the appeal has no force and is accordingly dismissed.