
(2018) 06 GAU CK 0023
In the Gauhati High Court
Case No : MACApp. 184 of 2015

Sri Chandra Kr Yadab

APPELLANT

Vs

Sri Dhruva Dhar Deb Barman And Ors

RESPONDENT

Date of Decision : 06-06-2018

Acts Referred:

Citation : (2018) 06 GAU CK 0023

Hon'ble Judges : MIR ALFAZ ALI, J

Bench : Single Bench

Advocate : B Gogoi, A.J Saikiar

Final Decision : Allowed

Judgement

1. Heard Mr. R. Baruah, leaned counsel for the appellant and Mr. A.J. Saikia, learnedcounsel for the Respondent/Insurance Company.

2. This appeal is by the claimant against the judgment and award dated 20.03.2015passed by the MACT, No. 1, Kamrup, Guwahati in MAC Case No. 53/2011.

3. The claimant Chandra Kumar Yadav sustained injury in a motor vehicleÂ accidentÂ onÂ 07.12.2010, involving vehicle bearing registration No.

AS-01-CC-4744, owned by the respondent No. 1 and insured with the respondent No. 3. As a result of the injury, the left leg of the claimant was

amputate below knee. At the time of accident, the claimant was working as handyman of a Dumper truck. The claimant approached the MACT

seeking compensation and the learned Tribunal awarded a compensation of Rs. 6,36,000 with interest @ 6% from the date of filing of the claim

petition.

4. Unsatisfied with the inadequacy of the compensation, the claimant preferred

this appeal for enhancement.

5. That the left leg of the claimant was amputated as a result of the injury and he was working as a handyman of a goods truck was not in dispute.

6. Learned counsel for the appellant, Mr. Baruah submits, that the disability of the claimant was assessed by doctor as 70%. However, the learned

Tribunal while assessing the loss of earning, assumed the functional disability as 50%. Having regard to the occupation of the claimant, the loss of

earning in the instant case as a consequence of the disability resulting from the amputation of his leg could not be less than the extent of physical

disability and as such, the learned Tribunal failed to appreciate the impact of the physical disability of the claimant on his earning capacity and thereby,

awarded a compensation, which was grossly inadequate, submits Mr. Baruah. Further contention of the learned counsel for the appellant is that the

quantum of award towards general damages, more particularly, on account of loss of amenities of life and loss of expectation of life were also very

meager and urged for enhancement of the quantum of award towards the general damages too.

7. Learned counsel for the Insurance Company, Mr. A.J. Saikia submits that as per the Employees Compensation Act, loss of earning for amputation

below knee is 50% and as such, the learned Tribunal rightly awarded loss of earning assuming functional disability as 50%.

8. The Apex Court in *Rajkumar Vs. Ajay Kumar* reported in (2011) 1 SCC 343 elaborately discussed the correlation between the physical disability

sustained due to accident and the functional disability or loss of earning of the injured resulting from the physical disability and laid down the guidelines

for granting compensation in case of personal injury in paragraphs 6, 10, 11 & 13 as follows.

6. The heads under which compensation is awarded in personal injury cases are the following:

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 earnings on account of permanent disability.

(iii) Future medical expenses. Non-pecuniary damages (General damages)

(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), (ii), (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.â??

â??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, 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 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.

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 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.â??

9. The Apex Court, in *G. Dhanasekar vs. Managing Director, Metropolitan Transport Corporation* reported in (2014) 14 SCC 391 dealing with the co-relation between the functional disability and physical disability held as under : -

â??As far as compensation for functional disability is concerned, it has to be borne in mind that the principle cannot be uniformly applied. It would depend on the impact caused by the injury on the victimâ??s profession/career. To what extent the career of the victim has been affected, thereby his regular income is reduced or dried up will depend on the facts and circumstances of each case. There may be even situations where the physical disability does not involve any functional disability at all. â??

10. What therefore follows from the above ratio is that though physical disability is required to be assessed by the medical expert, the impact of physical disability on the earning of the victim is required to be assessed by the Tribunal on the basis of the facts and circumstances of a particular case, reason being that the extent of functional disability or loss of earning may not always be equal to the extent of physical disability.

11. Learned Tribunal in the impugned judgment while determining the loss of earning or functional disability observed that from the evidence and admitted fact, it was proved that the claimant sustained disability from the amputation of leg and his income was affected. But no reason was given as to why or how the loss of earning or functional disability was taken as 50% as a result of 70% physical disability of the claimant. It is no doubt true, that physical disability is to be assessed by medical expert. However, in order to determine just and fair compensation, the Tribunal is supposed to undertake the exercise to determine the loss of earning resulting from such physical disability on the basis of the evidence and materials brought on record. In the instant case, evidently, the claimant was a handyman of a truck and as such he was basically a labourer engaged in physical works. The question is how far he would be able to pursue physical work as a labourer of a truck or otherwise with the one leg amputated. It is not difficult to understand that with the 70% disability, due to amputation of leg, the claimant will hardly be able to undertake the avocation in which he was engaged prior to the accident, as such, his earning capacity will be reduced drastically, inasmuch as he may not be able to undertake any other physical works too. Therefore, while assessing functional disability this aspect is required to be considered.

12. The Apex Court in *Sayed Sadiq Vs. Divisional Manager, United India Insurance Co. Ltd.* reported in (2014) 2 SCC 735 where the claimant was a vegetable vendor and he had 69% physical disability of lower limb, the Apex Court assessed the functional disability and loss of income of the claimant as 35% as a result of 69% physical disability of the lower limb. In the said judgment, in case of another person where a claimant sustained 22% physical disability of upper limb and 29% physical disability of lower limb and he High Court assessed the functional disability as 30%. The Apex Court re-assessed the functional disability and earning capacity as 85% corresponding to the physical disability of the upper and lower limb. In the instant case, there was no disability of upper limb, and the claimant sustained physical disability of lower limb to extent of 70%. Having regard to the nature of avocation of the claimant in the case in hand, in my considered view, functional disability of the claimant could not be less than the extent of physical disability sustained by the claimant and therefore, I am inclined to accept the functional disability as 70% i.e. equal to the extent of physical

13. Learned counsel for the appellant also pointed out that while determining loss of earning, learned Tribunal did not take into account the future

Pranay Sethi reported in (2017) ACJ 2700, the claimant would certainly be entitled to an amount equal to 40% of the income as future prospect.

some enhancement is required in this two counts also and accordingly, compensation in these two general heads are raised to Rs. 50,000/- each.

such, with 70% functional disability applying multiplier 18, the loss of earning would come to Rs. 4500+40%X70%X12X18 = 9,52,560/-.

Loss of earning Rs.4500+40%X70%X12X16 = Rs. 9,52,560/-

Loss of amenities of life Rs. 50,000/-

Loss of expectation of life Rs. 50,000/

Â Â Medical expensesÂ Rs.Â
20,000/-

Total Rs. 10,72,560/-

by depositing the same with the Tribunal within 6 weeks. The amount of future prospect shall not carry any interest. Any payment paid in the

17. The Tribunal shall ensure that 40% of the awarded amount with interest be fixeddeposited in the name of the claimant for a period of two years

and 30% for a period of six months in a nationalized bank. Rest of the amount shall be released to the claimant by A/C payee cheque.

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19. Send back the LCR.