

**2023 STPL(WEB) 41 SC
SUPREME COURT OF INDIA**

(ABHAY S. OKA AND RAJESH BINDAL JJ.)

SARNAM SINGH

Appellant

VERSUS

SHRIRAM GENERAL INSURANCE CO. LTD. & ORS.

F Respondents

Civil Appeal No. 3900 of 2023-Decided on 4-7-2023

Compensation, MACT

Motor Vehicles Act, 1988, Section 166 – MACT – Assessment of Disability - Appellant was working as a gunman with Bharat Hotel Limited - On account of amputation of his right leg above the knee, he was terminated from service w.e.f. 31.05.2015 -Not a matter of dispute that a person with his right leg amputated cannot perform the duty of a gunman - This is his functional disability - He was 50 years & 5 months old at the time of accident - Considering the aforesaid facts the Tribunal was right in assessing the loss of earning capacity of the appellant at 100% and assessing the compensation accordingly - High Court was in error in reducing the loss of earning capacity to 80%, relying upon the judgment of High Court, despite there being a judgment of this Court available on the issue - Impugned order passed by the High Court liable to be set aside and the award passed by the Tribunal restored.

(Para 10 to 12)

Cases Referred:

Mohan Soni vs. Ram Avtar Tomar And Others/[<i>2012</i>] 2 SCC 267].

JUDGMENT

Rajesh Bindal, J.-Aggrieved against the order passed by the Delhi High Court in MAC.APP.461/2016 dated August 25, 2017, the appellant has filed the present appeal before this court.

2. The appellant met with an accident on 24.11.2013 with Tempo bearing registration number UP 79T 1948. As a result of which he suffered injuries. He remained hospitalised from 24.11.2013 to 05.01.2014, for a period of around one month and ten days. Thereafter he remained under follow-up treatment for about a year. He suffered 85% disability in relation to his right lower limb as the same had to be amputated. The Motor Accident Claims Tribunal, South District, Saket New Delhi, (for short 'the Tribunal') vide its award dated 18.4.2016, awarded a compensation of Rs. 34,29,800/-. As the vehicle was insured, the liability was put on the insurance company. The Tribunal while assessing the compensation had awarded a sum of Rs. 1,50,000/- on account of pain and suffering, Rs. 95,000/- on account of diet, conveyance and attendant charges. In addition, a sum of Rs. 1,00,000/- was awarded on account of loss of amenities. The appellant was working as gunman with M/s Bharat Hotels Ltd. and was having a designation of Senior Assistant. At the time of accident, he was drawing a salary of Rs. 20,774/- per month including a conveyance allowance of Rs. 800/-. He was permanently employed with the company since 20.06.1992. At the time of his initial engagement, he was drawing a salary of Rs. 1,572/- per month which was increased to Rs. 20,774/- with the passage of time from 1992 to 2013. As a result of the accident and amputation of his right lower limb, his services were terminated w.e.f. 31.5.2015 on account of inability to discharge his duties for which he was employed. The Tribunal had taken the net salary at Rs. 19,947/- per month after reducing the

transport allowance from the gross salary. On the date of accident his age was 50 years and 5 months old. While assessing the compensation the Tribunal applied a multiplier of 13. While taking his functional disability at 100% with reference to the job on which the appellant was employed, compensation of Rs. 30,84,800/- was awarded.

3. Against the order of the Tribunal, the insurance company filed appeal before the High Court. The High Court vide impugned order dated 25.8.2017, while not finding any fault with reference to any of the findings recorded by the Tribunal, namely the income of the appellant, his age, multiplier applied or the disability suffered, reduced the compensation taking his loss of earning capacity at 80%, despite the fact that the appellant had suffered amputation of his right lower limb. The amount of compensation was reduced by Rs. 4,92,205/- and finally the amount determined was Rs. 28,43,000/- (rounded off). The compensation awarded under other heads was not disturbed.

4. It is the aforesaid order which has been impugned by the appellant before this Court.

5. Learned Counsel for the appellant has raised a limited argument that the order of the High Court reducing the loss of earning capacity to 80% is erroneous as the appellant had suffered amputation of his right lower limb. He was working as gunman. As a result of the accident on account of his inability to discharge duty as gunman his services were terminated w.e.f. 31.05.2015. Hence, in the case of the appellant the functional disability could not be taken as 80%. It should be taken as 100%.

6. On the other hand, Learned Counsel for the respondent Insurance company submitted that there was error in calculation of the compensation by the Tribunal keeping in view the disability certificate produced by the appellant. The same has been corrected by the High Court. The appellant had not preferred appeal seeking enhancement of compensation. There is no error in the order passed by the High Court. The appeal, therefore, deserves to be dismissed.

7. Heard Learned Counsel for the parties and perused the paper book.

8. The issue required to be considered in the present appeal falls in a very narrow campus. It is with the reference to the functional disability of the appellant for the purpose of assessment of compensation. The fact remains that he suffered injuries in a road accident on account of which his right lower limb was amputated. This resulted in permanent disability. There is a certificate produced by the appellant from Madan Mohan Malviya Hospital, (Government of NCT Delhi) showing his permanent physical disability at 85% with further note that the condition is not likely to improve and no further reassessment is recommended. The certificate was issued by a board of doctors on 28.03.2014. As per the photograph of the appellant appearing in the disability certificate, his right leg has been amputated above the knee. The income of the appellant, his age and other factors are not in dispute.

9. As to how compensation, in case where permanent disability of an injured affects his functional disability, is to be assessed has been considered by this Court, repeatedly. Reference can be made to the judgment of this Court in Mohan Soni vs. Ram Avtar Tomar And Others[(2012) 2 SCC 267]. In the aforesaid case the injured was working as a cart puller. As a result of the accident, his left leg was amputated. His permanent disability was assessed at 60%. The Tribunal assessed the compensation taking the loss of earning at 50% on the theory that he can still do some other work while sitting. The High Court did not disturb the finding regarding loss of income on account of disability. This Court found that the Tribunal was in error in taking the loss of earning at 50% as the injured was 55 years of age and it may be difficult for him to find a job at that stage. In fact, any physical disability resulting from an accident has to be judged with reference to the nature of the work being performed by the person who suffered disability. The same injury suffered by two different persons may affect them in different ways. Loss of leg by a farmer or a rickshaw puller may be end of the road as far as his earning capacity is concerned. Whereas, in case of the persons engaged in some kind of desk work in office, loss of leg may have lesser effect. This Court enhanced the loss of earning capacity from 50% to 90%.

10. Applying the same principle to the case in hand, we find that the appellant herein was working as a gunman with Bharat Hotel Limited. On account of amputation of his right leg above the knee, he was terminated from service w.e.f. 31.05.2015. It is not a matter of dispute that a person with his right leg amputated cannot perform the duty of a gunman. This is his functional disability. He was 50 years & 5 months old at the time of accident. Considering the aforesaid facts, in our view, the Tribunal was right in assessing the loss of earning capacity of the appellant at 100% and assessing the compensation accordingly. The High Court was in error in reducing the loss of earning capacity to 80%, relying upon the judgment of High Court, despite there being a judgment of this Court available on the issue.

11. To put the records straight, we may add that there is another error in order passed by the High Court in calculating the compensation. The compensation awarded by the Tribunal was taken on Rs. 33,34,800/-. Reducing a sum of Rs. 4,92,205/- therefrom, the compensation was assessed at Rs. 28,43,000/- (rounded off). However, total compensation awarded by the Tribunal was Rs. 34,29,800/- and not Rs. 33,34,800/-

12. For the reason mentioned above, the appeal filed by the appellant is allowed. The impugned order passed by the High Court is set aside and the award passed by the Tribunal is restored. There shall be no order as to costs.
