REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5949 OF 2008
(Arising out of SLP (C) No. 17058 of 2006)

RAMPRASAD BALMIKI … APPELLANT

Versus

ANIL KUMAR JAIN & ORS. … RESPONDENTS

J U D G M E N T

S.B. Sinha, J.

1. Leave granted.

2. Appellant was working as a driver with the Cantonment Board, Gwalior. On or about 14.5.1997, he was riding on a two-wheeler. A Tempo bearing No. MIH-7952 was allegedly being driven by the first respondent rashly and negligently; it collided with the two-wheeler of the appellant. Appellant sustained a fracture in his right femur bone as also

tibia bone of his right leg. He was hospitalized. Allegedly, he underwent three operations. The right leg of the appellant is said to have been shortened. He filed a claim petition before the Motor Accident Claims Tribunal in terms of Section 166 of the Motor Vehicles Act, 1988 (for short, "the Act") claiming a sum of Rs. 17.94 lakhs for sustaining permanent disability in his right leg, loss of service, loss of leave, deficiency and expenses in treatment, etc.

Long after the said accident took place as also after the filing of the claim petition, he was referred to the Civil Surgeon, Gwalior for medical check up. Allegedly, the Civil Surgeon declared him unfit to drive a vehicle pursuant whereto an order of premature retirement from service on medical ground was passed by the authorities of the Cantonment Board. The driver and the owner of the vehicle indisputably did not contest the claim.

The Insurance Company, however, filed a written statement, inter alia, raising a contention that as the appellant had obtained a discharge from J.A. Hospital without permission of Medical Officer and undertaken treatment from other doctors, he was himself responsible for the sorry state of affairs. It was furthermore denied and disputed that he had sustained any permanent disability. A contention was also raised that the accident had taken place due to his own negligence.

On the said pleadings of the parties, the Tribunal, inter alia, framed the following issues.

> "1. Whether driver Non-applicant No. 1 of Non applicant No. 2 by driving rashly and negligently Tempo No. MIH-7952 has caused the accident?
>
> 2. Whether because of accident the applicant sustained severe injuries and permanent disability on different party of his body?
>
> 3. Whether applicant is entitled to receive severally and jointly compensation of Rs.17,94,000/- from Non-applicants?

The issues Nos. 1 and 2 were answered in the affirmative.

So far as the question relating to the amount of compensation to which the appellant claimed himself to be entitled to, is concerned, it was recorded that he had not sustained any kind of permanent disability and, thus, was not entitled to any amount on that count. As regards the issue that he had been made to retire from service having been found to be unfit to drive a vehicle, the learned Tribunal opined:

> "In the cross examination AW-4 Satish Dixit has stated that complete information regarding retirement is mentioned in the Pension Register which has been sent to department. From the statement of this witness it appears that after retirement the applicant will receive pension. In the departmental evidence the applicant has not

> made it clear that there was any chance of his promotion in future, which has come to an end now, therefore on the basis of Rs.5,000/- per month salary claimed for 20 years, the amount of compensation which the petitioner has claimed, he is not entitled for the same. In case if the applicant would have made it clear that after retirement how much pension he will get and after reducing the same how much difference per month will come, in such circumstances, proper amount of compensation can be calculated. Since in the case it has not been established that to do any work the applicant has rendered completely disabled and when it is found that after retirement he will get the pension, in such circumstances on the basis of permanent disability no amount as claimed for compensation for the same can be allowed but because of actual loss sustained by him some amount should be allowed to him and the same will have to be decided on the basis of best judgment keeping in view his monthly salary. As such after retirement, the loss of salary which the petitioner will have to bear, keeping in view the age of the applicant, the amount of compensation is fixed at Rs.30,000/-. ”

An award for a sum of Rs. 85,000/- was passed by the Tribunal.

The High Court, however, on an appeal preferred by the appellant herein against the said judgment enhanced the amount of compensation to Rs. 3,75,000/- opining that even as per the certificate issued by the Medical Board, the extent of permanent disability suffered by him was 40%, holding:

> "Even assuming that the doctors have not proved any permanent disability, still it has come on record from the statement of Satesh Dixit AW-4 that the present appellant was retired from the services due to the said injury in the year 2001 i.e. after a period of two years as he was declared unfit for driving the vehicle. Considering this fact, it cannot be said that there is no permanent loss to the earning capacity of the appellant and we assess the loss of earning capacity to the extent of 40%.

3. Mr. Ankur Mody, learned counsel appearing on behalf of the appellant would submit that both the Tribunal as also the High Court have committed a serious error insofar as they failed to take into consideration that 'total disablement' would mean 'disablement from doing his job in which he was engaged'. Strong reliance in this behalf has been placed by the learned counsel in Pratap Narain Singh Deo v. Srinivas Sabata & Anr. [(1976) 1 SCC 289]. It was furthermore submitted that in any event the High Court should have granted a higher amount of compensation keeping in view loss of his future prospect.

4. Mr. R.C. Mishra, learned counsel appearing on behalf of the respondents, on the other hand, would contend that in absence of any statute or statutory rule or any other material, the functional disability would be the same as loss of earning capacity, and in that view of the matter, once the structured formula is applied for the purposes of

computing the amount of compensation, what is relevant is not only the income earned by the appellant but also the extent of purported disability suffered by him, that is, the multiplicand and as in this case the correct multiplier has been applied, the impugned judgment warrants no interference.

5. Appellant filed an application in terms of Section 166 of the Act and not in terms of Section 163A thereof. It is not a case where even the Workmen's Compensation Act, 1923 (for short, "1923 Act") was applicable.

The jurisdiction of the Tribunal to make an award is confined to determination of the kind of compensation which appears to it to be just. The jurisdiction exercised by the Tribunal in terms of Section 163A and Section 166 of the Act is different. This distinction has been noticed by this Court in Rajesh Kumar @ Raju v. Yudhvir Singh & Anr. [2008 (8) SCALE 497] holding:

> 7. The claim petition was filed under Section 166 of the Act and not under Section 163A thereof. It was contended by the claimant-appellant that the driver of the bus in question was rash and negligent as a result whereof, the accident took place. By reason of Section 167 of the Act, an injured person had the option either to file a claim under the Motor Vehicles Act or the Workmen's Compensation Act, if both the Acts apply. It is, therefore, a case where the claimant could have filed at his

option an application under the Workmen's Compensation Act.

Section 163A provides for filing of a claim petition where an accident took place by reason of use of the motor vehicle. It is not necessary to prove any fault on the part of the driver or the vehicle. The Tribunal in a proceeding arising under Section 166 of the Act is required to hold a full fledged trial. It is required to collect datas on the basis whereof, the amount of compensation can be determined. Under Section 163A of the Act, however, the question of liability and extent of proof thereof are not justiciable. The Tribunal can determine the amount on the basis of the basic datas provided therefor.

Explanation appended to Section 163A of the Act, reads, thus :

Explanation.—For the purposes of this sub-section, 'permanent disability' shall have the same meaning and extent as in the Workmen's Compensation Act, 1923."

8. The reference to Workmen's Compensation Act by incorporation was only for the purpose of sub-section (1) of Section 163A. It was not meant to apply in a case falling under Section 166 of the Act. Had the provisions of the Workmen's Compensation Act been applicable, the procedure laid down therein would also apply. For the purpose of the definition of total disablement as also person who can grant a certificate therefor, namely, a qualified medical practitioner, Section 2(e) and 2(i) would be attracted. In terms of the 1923 Act, the amount of compensation is required to be determined as specified in Section 4. The Rules made in terms of Section 32 of the Act known as Workmen's Compensation Rules 1924, would also be applicable."

Ordinarily, the amount of compensation should be determined having regard to the state of affairs as was existing on the date on which the cause of action arose. We, however, do not mean to lay down a law that the subsequent event(s) can never be taken into consideration but we must also place on record that for the said purpose another application would not be maintainable subsequently.

6. Appellant in this case is guilty of suppression of facts. With a view to obtain a just compensation, he should have placed all relevant materials on record. The benefits to which he was found to be entitled to pursuant to the order of retirement on medical invalidation were required to be disclosed before the Tribunal so as to enable it to arrive at a conclusion as regards the quantum of 'just compensation'. Why those materials have not been placed before the Tribunal is best known to the appellant. We do not know whether he had received any other or further amount apart from the amount of pension. We are also not aware as to whether any of his dependants obtained an appointment on compassionate ground on medical invalidation, and if such a Scheme had been framed by the employer. It has also not been disclosed as to at whose instance he was referred to Civil Surgeon and was not examined by a Medical Board of the Cantonment Board itself.

7. The Civil Surgeon of Gwalior, Dr. R.P. Sharma had granted the certificate of disability in favour of the appellant only on the basis of the X-ray reports.

In his deposition, he stated:

> "It is true that I myself has not treated the applicant Ramprasad. The certificate given by me is based on the record of treatment of the applicant, self examination and X-ray report. Himself said that X-ray of the applicant was also carried out. After perusing the X-ray plate enclosed in the case, I cannot say that whether there is X-ray plate which I have asked or not. It is true to say that in my certificate I have not mentioned the kind and percentage of disability caused to Ramprasad. It is not necessary to describe the same in such certificate."

It is accepted that the appellant obtained treatment from different Orthopedic specialists.

8. It is not a case where the claimant had an option to file a claim petition either under the Act or under the 1923 Act.

In Pratap Narain Singh Deo (supra), whereupon reliance has been placed by Mr. Mody, this Court was dealing with a case under the 1923 Act. Respondent therein suffered injuries resulting in amputation of his left arm from the elbow. In that view of the matter, the Commissioner of Workmen adjudged him to have lost "100 per cent of his earning

capacity" as by loss of his left hand he was evidently rendered unfit for the work of carpenter as the same was not possible to be done by one hand only. This Court, however, although took notice of the definition of the term 'total disablement' as contained in Section 2(1)(l) of the 1923 Act but had no occasion to consider the proviso appended thereto, which reads as under:

> "PROVIDED that permanent total disablement shall be deemed to result from every injury specified in Part I of Schedule I or from any combination of injuries specified in Part II thereof where the aggregate percentage of the loss of earning capacity, as specified in the said Part II against those injuries, amount to one hundred per cent or more;"

9. There exists a distinction between a 'total disablement' and 'total permanent disablement' as contained in Schedule I Part I of the 1923 Act. Sufferance of fracture by itself resulting in shortening of leg to some extent does not come within the purview of the 'permanent total disablement' even under the 1923 Act. It is in that view of the matter, the Tribunal opined:

> "For sustaining permanent disability, the identity card issued to disabled person by Board is produced by the Applicant as Ex.P-8. On perusal of the said identity card it is found that in column No.11 the nature and extent of disability it is not made clear that what kind of disability was found. On the contrary below the

> next column 40% is written. But for that it is not clearly mentioned that what is 40% and if it is for disability, the kind of disability is not mentioned. In such situation on the basis of Ex. P-8 Identity Card it cannot be held that Identity Card is issued to the applicant for permanent disability. Although original identity card in evidence is acceptable but when regarding permanent disability the position is not clear, in such a case the doctor who have issued the identity card should be produced in evidence. But the applicant has not produce the doctor who have issued the identity card in evidence.

PW-3 Dr. B.P. Purohit, who had treated the appellant, did not say that the appellant had sustained any permanent disability.

With regard to the evidence of PW-6 Dr. R.P. Sharma, Civil Surgeon, the Tribunal opined:

> "Although AW-6 R.P. Sharma has stated that on request of the Cantonment Board Officers he has examined the applicant and have not found him fit for driving. This witness has stated that after looking to the photo copy of Certificate he has given the statement. This witness has not made it clear that because of injuries to the applicant, permanent disability was found in the applicant. The opinion for not finding him fit for driver, was given by him because bones could not have joint but he has not made it clear whether joint of bones was possible or not. Keeping in view the statement of this witness it can be held that due to non-joint of bones the applicant was not able to work on the post of driver but it cannot be held that for the work of driver he has become unfit for the work of driver for ever. As such on the basis of the

> aforesaid discussion on the basis of evidence produced by the applicant it is not proved that because of sustaining injuries by the applicant in accident the same has caused him permanent disability."

10. Be that as it may, the High Court, in our opinion, correctly proceeded on the assumption that the extent of permanent disability suffered by the appellant is only 40% and not 100%. In that view of the matter alone he was found to have lost earning capacity to the tune of Rs.2000/- per month having regard to the fact that he had been getting a salary of Rs.4,847/- per month. Even otherwise, the amount of pension which he had been receiving and other benefits at the time of his retirement, which if invested, would have mitigated the quantum of damages and the same was required to be taken into consideration. The High Court, therefore, in our opinion, was more than liberal in awarding the said amount of compensation in favour of the appellant.

The decision in Grifan v. Sarbjeet Singh & ors. [(2000) 9 SCC 338], relied upon by Mr. Mody does not lay down any legal principle. Although therein medical evidence showed that the claimant had suffered 80% disability, the overall disability was taken at 50% only; of course, the future prospects have been taken into consideration, as in that case also the right leg of the claimant had to be amputated. Some shortening

of the legs can be made up with specially manufactured shoes. A person can even drive a vehicle even with artificial limbs.

A claim for obtaining 100% compensation for his permanent disability must be supported by reason as has been held by this Court in National Insurance Co. Ltd. v. Mubasir Ahmed and Anr. [(2007) 2 SCC 349]. No material has been brought on record by the appellant in this regard.

11. For the reasons aforementioned, we do not find any infirmity in the impugned judgment. The appeal is dismissed accordingly. However, in the facts and circumstances of the case, there shall be no order as to costs.

……..…….J.
[S.B. Sinha]

..……..…….J.
[Cyriac Joseph]

New Delhi;
October 01, 2008