**(2012) 07 AHC CK 0307**

**Allahabad High Court**

**Case No:** First Appeal From Order No. 2853 of 2012

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| Om Prakash Goyal | | APPELLANT |
| | Vs | |
| Raghvender Vikram Singh and Another | | RESPONDENT |

**Date of Decision:** July 17, 2012

**Acts Referred:**

- Evidence Act, 1872 - Section 74, 77
- Motor Vehicles Act, 1988 - Section 140, 141, 142, 143, 144
- Workmens Compensation Act, 1923 - Section 2, 3, 4

**Citation:** (2012) 8 ADJ 534 : (2012) 6 AWC 5621

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

**Bench:** Division Bench

**Advocate:** Pramod Jain, for the Appellant;

**Final Decision:** Dismissed

**Judgement**

1. The present First Appeal From Order challenges the validity and correctness of the judgment and award dated 18.5.2012 passed by Motor Accident Claim Tribunal/Additional District Judge, Court No. 1, Ghaziabad in M.A.C.P. No. 10/2006. The appellant has sought relief for enhancement of compensation as claimed by him to the tune of Rs. 7,20,000/- alongwith interest @ 15% per annum. The brief facts of the case are that the appellant was posted as Special Judge, E.C. Act, Sultanpur, on 9.8.2005 while he was going to Court on his scooter, he met with an accident at about 10.15 a.m. near the entrance gate of the Civil Court. The accident occurred due to collision with the bus bearing registration No. DL IP 6359 owned by Rajendra Vikram Singh. It is alleged that this bus without any passenger driven by Raj Kapoor Mishra had hit the appellant''s scooter from behind near the entrance gate of Civil Court, due to which the appellant fell down with his scooter. Front left wheel of Bus went over the scooter crushing the scooter and causing fracture in the

left leg of the claimant-appellant below the knee in Tibia and fibula bones. The FIR of this accident was lodged on the same day at P.S. Kotwali Sultanpur. The police submitted charge-sheet against respondent No. 2 and criminal case is pending in the Court of C.J.M. Sultanpur.

2. The appellant also filed motor accident claim application before the Tribunal at Ghaziabad which was registered as M.A.C.T. Case No. 10 of 2006 against the owner and driver of the bus. The claim petition was contested by the owner of the bus claiming that there is contradiction in the averment made in the claim petition, income, documentary and oral evidence and the circumstances in which the said accident is said to have taken place as well as the extent of permanent disability claimed by the claimant which are to be proved by the him. He also raised the question of jurisdiction on the ground that claim petition has been filed at Ghaziabad though cause of action had arisen at Sultanpur whereas the claimant-appellant resides in his government residence B-11 Officers Colony, Sultanpur.

3. The counsel for the appellant has brought to our notice by his opening sentence that appellant was the judicial officer at the time of accident serving at Sultanpur. It is contended by the claimant-appellant that after his evidence, the date in the M.A.C. Case was fixed for evidence of the opposite parties but they did not produce any evidence. However, the Tribunal partly allowed the claim of the appellant and awarded inadequate amount of compensation to him amounting to Rs. 65,705/- alongwith interest @ 6% per annum from the date of issues framed in the petition till the realization from the respondents. Aggrieved by the inadequate award of compensation has filed this appeal for enhancement.

4. The award impugned is assailed by the appellant on the ground that the permanent disability had been caused in the accident, as a result of which his left leg became short by 1.5 inch and in support of his disability the applicant had submitted two medical certificates for establishing the fact that he had suffered permanent disability to the extent of 40% but the Tribunal has completely overlooked to consider one of the medical certificates merely on the ground of being not proved by producing medical officer concerned.

5. It is argued that in the first disability certificate, the disability of the claimant had been shown to be 15% but after removal of plaster the permanent disability was assessed to the extent of 40% regarding which the second medical certificate was issued. However, the Tribunal has wrongly held that the second medical certificate cannot be relied upon as it had not been proved. It is stated that Section 74 read with Section 77 of the Evidence Act provides that documents or records forming acts of a public officer, public documents and contents thereof may be proved by producing their certified copies and it need not be proved by calling a witness. Therefore, the learned Tribunal committed a patent illegality apparent on the face of record in discarding the medical report for not having proved by the doctors

concerned.

6. The next contention of the Learned Counsel for the appellant is that the claimant-appellant had suffered permanent disability to the extent of 40% in his left leg as stated above and therefore the impact of loss of earning ought to have been seen as percentage of economic loss or the loss of earning capacity. It is further argued that the ascertainment of the effect of permanent disability on the actual earning capacity involves three steps. The Tribunal has to fix for ascertaining what activities the claimant could carry on inspite of permanent disability and what he could not do as a result of the permanent disability: he has to ascertain his avocation, profession and nature of work before the accident as also his age and the third step is to find out whether inspite of permanent disability, he was prevented or restricted from discharging his previous activities and function, as such the findings to the contrary recorded by learned Tribunal are patently illegal and based on surmises and conjectures. He then argued that had the appellant not met with the accident he could have joined some other better job or profession in future or he could have launched a more profitable business, but he was restricted due to this disability for which the Tribunal ought to have awarded pecuniary compensation and that permanent injuries by fracture in Tibia and Fabula bones do not construe permanent disability in view of the provisions of Workmen Compensation Act.

7. The second leg of the argument of the appellant is that claim petition was filed u/s 166 of Motor Vehicle Act and therefore his case ought to have been considered under Sections 140, 141 and 142 of the Motor Vehicle Act but in so far as permanent disability was concerned. The Tribunal committed an error in deciding the claim petition in respect thereto which ought to have been decided under the provisions of Workmen Compensation Act.

8. It is urged that appellant had been continuing his treatment from the very date of accident i.e. 9.8.2005 and had spent a huge amount of money on conveyance charges for going to Kannauj, Ghaziabad and Delhi after his transfer from Sultanpur to Kannauj. It is stated that in fact that award amount of Rs. 10,000/- towards future medical expenses and Rs. 8500/- toward special diet merely on the ground that appellant remained on medical leave for 84 days only ignoring the fact that his left leg had remained under plaster for about seven months at a stretch, is too inadequate or meager. It is vehemently argued that pay of the appellant on the date of accident was Rs. 37,000/- after enhancement of D.A. which was fixed by the government of U.P. as such the Tribunal has wrongly considered the pay certificate which were issued before the enhancement and further erred in deducting Rs. 8800/- from the appellant pay as the same were towards the GPF, GIS etc which were payable to him after his retirement. He has also contended that Tribunal under estimated the damages for mental and physical agony for Rs. 10,000/- for future, though the appellant had been crippled for life.

9. Last but not the least, the counsel for the appellant submits that 6% interest per annum awarded by the Tribunal w.e.f. 10.4.2006 i.e. date of framing of issue ought not to have been awarded instead a higher percentage of interest minimum @ 12% per annum from the date of institution on claim petition i.e. 17.12.2005 ought to have been awarded to him. On the basis of pleadings of the parties following issues were framed:

10. After hearing the counsel for the parties and on consideration of pleadings and evidence on record, the Tribunal decided issue No. 1 by holding that Respondent No. 2 has not appeared before the Court in defense and therefore, it is proved from evidence on record that accident was a result of rash and negligent driving of the offending bus by him. Issue No. 2 was not pressed by the counsel for the parties. Thereafter the Tribunal decided issue No. 3 for deciding the relief to which appellant may be entitled. In for far as the 2nd leg of argument of Learned Counsel for the appellant regarding permanent disability under the Workmen''s Compensation Act is concerned, it is misconceived. Section 140 of Chapter 10 of the Motor Vehicles Act relates to a case of no fault liability. Section 141 provides for other right to claim compensation for death or permanent disablement and in addition to any right, except the right to claim under the scheme referred to Section 163-A of the Motor Vehicles Act. It is further provided that a claim for compensation u/s 140 in respect of death or permanent disablement of any person shall be disposed of as expeditiously as possible. Thus Sections 140 and 141 relate to a case of no fault liability. Section 142 of the Act defines permanent disability as construed under the Motor Vehicle Act:
(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 of permanent impairing of the powers of any member or joint;

(c) permanent disfiguration of the head or face.

Further more according to Section 143 the provisions of Chapter 10 of the Motor Vehicles Act shall also apply in relation to any claim for compensation in respect of death or permanent disablement of any person under the Workmen''s Compensation Act. Section 144 the provides that provisions of Chapter 10 of the Act shall have overriding effect notwithstanding anything contained in any other provision of this Act or any other law for the time being in force. The injuries sustained by the appellant does not fall under any of the above category, so it cannot be said that he suffered any permanent disablement.

11. Section 3 in Chapter 2 of the Workmen''s Compensation Act provides liability of compensation on the employer payable to his workman for injuries sustained by during employment whereas Section 4 deals with quantification of the amount the compensation for death or permanent total disablement results from the injury. The appellant has suffered simple fractures in tibia and fibula bones. In

cross-examination he has admitted that he did not undergo surgery for the bone injuries, however, bone-grafting had been advised but he has not adopted that procedure. This statement of appellant seems to be after though or imaginary because had it been so, he should have certainly undertaken bone-grafting during the pendency of the claim petition i.e. about five years. He has been lucky enough not to bear the trauma of ORIF i.e. Open Reduction Internal Fixation that involves the surgical implementation of implants (nails and plates) for the purpose of repairing his broken bones.

12. The claim petition of the appellant is u/s 166 of the Motor Vehicle Act. Merely because the Tribunal has compared the provisions of the Motor Vehicles Act and the Workmen''s Compensation Act and had also taken aid of the guidelines under the Workmen''s Compensation Act into consideration would not in any way make the award illegal or erroneous in law. In this connection we are benefited by the decision of the Apex Court in the case of Raj Kumar Vs. Ajay Kumar and Another, , wherein the Hon''ble Supreme Court has also advised that the Tribunal may also keep in view the first schedule to the Workmen''s Compensation Act, 1923 which gives some indication about the extent of permanent disability in different types of injuries, in the case of workmen. The Hon''ble Court has further observed in paras-7 and 8 of the report which are reproduced as under:

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 (or 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 terns 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 v. D.M., National Insurance Co. Ltd., 2010 (8) SCALE 567).

In this case the Hon''ble Court has given guidelines for assessment of permanent disability and calculating compensation there for, the relevant para is as under:

13. We may now summarize the principles discussed above:

(i) All injuries (or permanent disabilities arising from injuries), do not result in loss of earning capacity.

(ii) The percentage of permanent disability with reference to the whole body of a person, cannot be assumed to be the percentage of loss of earning capacity. To put it differently, the percentage of loss of earning capacity is not the same as the percentage of permanent disability (except in a few cases, where the Tribunal on the basis of evidence, concludes that percentage of loss of earning capacity is the same as percentage of permanent disability).

(iii) The doctor who treated an injured-claimant or who examined him subsequently to assess the extent of his permanent disability can give evidence only in regard the extent of permanent disability. The loss of earning capacity is something that will have to be assessed by the Tribunal with reference to the evidence in entirety.

(iv) The same permanent disability may result in different percentages of loss of earning capacity in different persons, depending upon the nature of profession, occupation or job, age, education and other factors.

13. On the question of disablement we record our displeasure with the conduct of appellant who is former judicial officer (retired Addl. District & Sessions Judge). He submitted his first disability certificate dated 3.4.2007 wherein the percentage of disability was shown to the extent of 15%. He has also examined the doctor to prove this certificate. Perhaps he was not satisfied with the disability certificate and then

he obtained second disability certificate from C.M.O. Kannauj showing 40% disability, which was not proved by examining the doctor, who has issued the certificate, like the earlier one. Second certificate appears to have been procured by him where he was posted at Kannauj. The appellant has not shown any cause for obtaining other disability certificate for himself from the district where he was working as Addl. District Judge. If there was any necessity, he should have consulted the CMO of the same district from where he has obtained earlier certificate, who could have been in better position to assess the alleged disability and would have given reasons for increase in the disability of the appellant by giving reasons or data. This conduct of the appellant is also not above board. Moreover, it has also not been connected that the increased disability also pertains to the same injuries, which were caused to the appellant many years ago. The appellant is not an ordinary litigant. He had been responsible senior judicial officer in the State and had also dealt with hundreds of motor accident claims during his posting as Addl. District Judge. He has retired from service during the pendency of the claim petition on 31.12.2008, as he has shown his date of birth as 5.12.1948. He ought to have exercised restraint in obtaining second disability certificate, which was contradictory to the earlier one. Further the claim of the appellant that his leg is shortened by 2 cms. is not corroborated from any of the disability certificate. In view of the above quoted observations of the Hon''ble Court given in the case of Raj Kumar (supra) we find that the learned Tribunal has rightly held that from the alleged 15% disability there was no functional disability of the appellant nor his earning or working capacity had reduced, so he is not entitled to any compensation for loss of any income present or future.

14. The Tribunal then proceeded to examine the documents and evidence pertaining to medical treatment brought on record by the appellant i.e. prescription of medicines, medical certificate, investigation reports regarding urine test, hormone test and other related tests said to have been conducted by the pathologist. It came to conclusion that total amount of medical bills for the period 18.8.2005 to 9.12.2006 for purchase of medicine is Rs. 27,959/-. The Tribunal also awarded Rs. 100/- per day for special diet for 85 days amounting to Rs. 8500/-. As regards the conveyance expenses are concerned he could only prove payment of Rs. 1600/- for the conveyance and could not prove the payment of other receipts. He was also not able to prove that he had been transferred with regard to his treatment. After deducting the amount received by him by returning some medicines the Tribunal found that the appellant was only entitled to a sum of Rs. 27,205/- under that head. It may be noted here that appellant could not prove bills of Rs. 4000/-, Rs. 3500/- and Rs. 3600/- which was disallowed by Tribunal. It found that appellant was only entitled to a total sum of Rs. 65,705/- as stated above.

15. Rate of interest which may be awarded by the Tribunal is dependent upon the facts and circumstances of each case which the Tribunal may in its discretion is empowered to grant. Rate of interest at 6% is normally and generally considered to

be adequate but that would not affect the discretion of the Tribunal or Courts according to the facts and circumstances of the case. It may be noted here that accident had taken place in the year 2005 no basis has been given by the appellant for awarding 12% interest which in our opinion is very exorbitant. Moreover, the appellate Court should be slow in disturbing the discretionary findings of the Tribunal if there is no ambiguity or illegality.

16. We, therefore, find that the claim of the appellant before the Tribunal was highly exaggerated and he was not able to prove the medical bills nor give medical bills for claimed amount of Rs. 1 lac incurred by him towards treatment. In view of the foregoing discussion, we do not find any merit in the appeal and it is accordingly dismissed.