**V.GOPALA GOWDA, CJ.**

M.A. NO.302 OF 1995 (Decided on 24.06.2011)

**BALARAM PANDA** ……Appellant.

*.Vrs.*

**M/S. NATIONAL INSURANCE CO. LTD. & ANR.** ……Respondents.

**MOTOR VEHICLES ACT, 1988 (ACT NO.59 OF 1988) – Ss. 163-A, 166.**

For Appellant - M/s. A.Mohanty & M.K.Patnaik
For Respondent - M/s. M.Sinha & P.R.Sinha (for R-1)

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***V.GOPALA GOWDA, C.J.*** This Miscellaneous Appeal is filed by the claimant as he is aggrieved by the judgment and award passed by the Third M.A.C.T., Puri in M.A.C.T. Misc. Case No.140 of 1993 in awarding inadequate compensation of Rs.40,000/- with 9 % interest urging various facts and legal contentions.

2. The brief fact of the case is stated for the purpose of appreciating the correctness of the compensation awarded towards the injury of amputation of the claimant's right leg below the knee plus Rs.10,000/- hospital expenses total Rs.40,000/-.

3. The undisputed facts are that the claimant being represented by his father Padma Charan Panda claimed compensation of Rs.2,00,000/- on different heads for loss of compensation, mental shock, physical pain, loss of pleasure in life, loss of health and expenses incurred for medical treatment, special diet, accommodation etc. The injured was a boy of 8 years on the date of accident, i.e., 16.1.1993 and prosecuting his study in Class-III in Baseli Sahi U.P. School.

4. It is the case of the claimant that while he was sitting on the verandah of his house in Harachandi Sahi on Lokanath Temple Road, a truck bearing registration No.ORP-6857 came in a high speed loaded with chips though the road was very narrow and in order to negotiate a bend it swerved to its further right but unfortunately the driver of the offending truck lost control over the steering as a result of which the right side bumper of the offending vehicle dashed against the boy causing severe bleeding injury to his right leg. In fact, the boy's right leg below the knee joint was completely chopped off at the spot. Immediately thereafter the injured boy was shifted to District Headquarters Hospital, Puri for his treatment, where he was admitted as an indoor patient. But, as his condition became serious, he was referred to S.C.B. Medical College Hospital for better treatment, but he was admitted to Ideal Nursing Home, Buxi Bazar, Cuttack. The claim was opposed by the Insurance Company as opp. party no.1 the insured remained ex parte. The Tribunal on the basis of the pleadings of the parties framed the following five issues:

1. Is the application maintainable?

2. Has the injured Balaram Panda sustained injuries on account of motor accident involving ORP-5867 Truck resulting amputation of his right leg below the knee?

3. Was the driver of the truck rash and negligent in causing the accident?

4. Is the applicant entitled to get compensation, if so, to what extent and from which O.P.?

5. The Tribunal on the basis of the pleadings and evidence on record has answered all the points in affirmative in favour of the claimant and while answering Issue no.4 regarding quantum of compensation at paragraphs-8 to 11 of the award it has awarded Rs.30,000/- towards injuries as well as Rs.10,000/- towards treatment expenses by recording reasons at paragraph-10 that the claim was filed in the year 1993 and the award is passed in 1995 and by this two years have elapsed out of that 20 years as the ambition of the parents was to make the unfortunate child a school teacher and he would have earned about Rs.2,000/- per month after twenty years; and in that event, his contribution to the family would have been in the order of Rs.500/- per months. Accordingly, the claimant would have started earning after 18 years by then. Therefore, the learned Member of the Tribunal came to the conclusion that if a sum of Rs.30,000/- is deposited under the Fixed Deposit Scheme in the name of the unfortunate boy, it will become Rs.2.25 lack approximately, if calculated at the prevalent rate of interest after a lapse of 18 years. That amount of Rs.2.25 lac will fetch him interest at the rate of Rs.2000/- per month keeping in view the rate of interest then applicable to F.D. Scheme. On the basis of such calculation, he awarded the aforesaid compensation in favour of the claimant. The correctness of the same in awarding inadequate compensation is questioned in this appeal by the claimant urging the following grounds:

A. For that the impugned award is inordinately low and contrary to the evidence on record.

B. For that the learned Tribunal has committed gross illegality in fixing up a sum total of Rs.30,000/- without keeping in mind the future standard of living of a person and his earning standard after 20 years particularly when there is un-assailed evidence on record that the appellant would have contributed Rs.500/- per month.

C. For that the fixation of multiplier by the learned court below is inordinately low and contrary to the evidence on record.

D. For that the impugned judgment and award is otherwise bad in law and liable to be enhanced to the amount claimed.

6. The approach of the learned Member of the Tribunal while recording the finding should have been that when the right leg below the knee of a minor boy aged about eight years has been amputated and thereby he has lost the amenity of his life throughout his life, which is a permanent total disablement and the Tribunal should have awarded just and reasonable compensation keeping in view the age of the minor boy

and not on the income at the time of injury nor what he would have earned after a period of twenty years on the basis of the of the ambition of the parents as they wanted their son to become a school teacher in future. This is totally impermissible in law as that is not the criterion to determine the compensation in relation to the injured claimant even though he was minor and not earning. Therefore, it is contended by the learned counsel that the determination of compensation for the reasons recorded at paragraph-9 of the award is not only erroneous, but also suffers from error in law. This Court and the Supreme Court in catena of cases held about what should be the approach of the Tribunal while recording a finding in a case of this nature as in the instant case the right leg below the knee of a minor boy aged about eight years has been amputated and throughout his life he has lost the important organ of his body and thereby lost the amenity of his life. He must have been put to much mental agony, pain and must be requiring the assistance of others throughout his life. Therefore, the Tribunal having not taken all these relevant factors into consideration has failed to apply the correct legal principle while determining the compensation in respect of the injured boy who suffered grievous injury to his right leg, which is amputated below the knee for ever. The total percentage of disablement of the body should be the relevant consideration in the instant case keeping in view the ratio of the judgment rendered by Supreme Court in ***Priya Vasant Kalgutkar v. Murad Shaikh and others***, (2009) SCC 54, wherein the Supreme Court considered the case of a minor aged 9 years who met with an accident and suffered 10% permanent disability and after examining the provisions under Section 163-A and Schedule-II of the M.V. Act, 1988, observed that the compensation for injuries suffered by a person in a motor vehicular accident can be determined either on the basis of actual damages suffered or upon application of structured formula. In the said judgment at paragraph-7, the Supreme Court has referred to the case of ***Lata Wadhwa v. State of Bihar***, (2001) 8 SCC 197. In the said case, compensation awarded in respect of the minor children was divided into two groups, i.e., the first group between the age group of 5 to 10 years and the second group between the age group of 10 to 15 years. In the case of children between the age group of 5 to 10 years, a uniform sum of Rs.50,000/- has been held to be payable by way of compensation, to which the conventional figure of Rs.25,000/- is to be added and as such to the heirs of the 14 children, a consolidated sum of Rs.75,000/- each, has been awarded. So far as the children in the age group of 10 to 15 years are concerned, there are 10 such children who died on the fateful day and having found their contribution to the family at Rs.12,000/- per annum, 11 multiplier has been applied, particularly, depending upon the age of father and then the conventional compensation of Rs.25,000/- has been added to each case and consequently, the heirs of each of the deceased above 10 years of age, has been granted compensation to the tune of Rs.1,57,000/-.

7. Therefore, the Tribunal is not justified in non-applying the above principle as laid down by the Supreme Court in the case of permanent disablement suffered by the minor boy aged about eight years who has lost his important organ of his body, i.e., right leg below the knee for ever and thereby he will not only suffer from grievous hurt on account of amputation of his leg below the knee but also he cannot walk and run, perform his normal routine work, move freely. He has lost happiness of his life and has lost marital love and enjoyment and he requires an assistant throughout his life for walking, squatting, sitting and to attend his normal routine work.

8. For the purpose of applying the correct principle in the instant case, it is worthwhile to extract the relevant paragraphs from the judgment of Karnataka High Court in the case of ***K.Narasimha Murthy v. the Manager, M/s Oriental Insurance Co. Ltd., Bangalore and another***, ILR 2004 KAR 2471, wherein the Division Bench in an appeal preferred by the claimant under Section 173 of the M.V. Act, 1988 succinctly laid down the legal principle after extracting the relevant paragraphs from the decision of the appeal cases in (1922) 2 AC 242, (1880) 5 App Case 25, (1963) 2 All ER 625, (1965) 1 All ER 563, ILR 1987 Karnataka 1399, (170) AC 1 at 22, (1874) 4 QBD 406 (1970) 114 Sol Jo 193, (1969) 3 ALL ER 1528 and referring to Mc Gregor on Damages (14th Edition) in support of their conclusion for determination of the compensation for personal injury both for pecuniary and non-pecuniary losses in favour of the injured petitioners, which reads as under :

> "***Para-18.*** VISCOUND DUNEDIN, in AMIRALTY COMRS vs. S.S., (1922) 2 AC 242, Valeria has observed thus :
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> "The true method of expression, I think, is that in calculating damages you are to consider what is the pecuniary consideration which will make good to the sufferer, as far as money can do so, the loss which he has suffered as the natural result of the wrong done to him"
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> ***Para-19***. LORD BLACKBURN IN LIVINGSTONE vs. RAWYARDS COAL CO., (1880) 5 App Case 25, has observed thus :
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> "Where any injury is to be compensated by damages, in settling the sum f money to be given……you should as nearly as possible get at that sum of money which will, put the person who has been injured….in the same position as he would have been in if he had not sustained the wrong."
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> ***Para-21***. Lord Morris in his memorable speech in H.WEST AND SONS, (1963) 2 All ER 625, point out this aspect in the following words:
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> "Money may be awarded so that some thing tangible may be procured to replace of like nature which has been destroyed or lost. But the money cannot renew a physical frame that has been scattered and shattered. All the Judges and Courts can do it to award sums which must be regarded as giving reasonable compensation. In the process there must be the endeavour to secure some uniformity in the general method of approach. By common assent must be reasonable and must be assessed with moderation. Further more, it is eminently desirable that so far as possible comparative injuries should be compensated by comparable awards."
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> ***Para-22***. In the above case, Their Lordships of the House of Lords, observed that the bodily injury is to be treated as a deprivation which entitles plaintiff to the damage and that the amount of damages varies according to the gravity of the injury. Their Lordships emphasized that in personal injury cases the Court should not award merely token damages but they should grant substantial amount which could be regarded as adequate compensation.

***Para-23***. In WARDS, (1965) 1 ALL ER, speaking for the Court of Appeal in England, Lord Denning while dealing with the question of awarding compensation for personal injury laid down three basic principles:

"Firstly, assessability. In cases of grave injury, where the body is wrecked or brain destroyed, it is very difficult to assess a fair compensation in money, so difficult that the award must basically be a conventional figure, derived from experience or from awards in comparable cases. Secondly, uniformity in awards so that similar decisions may be given in similar cases, otherwise, there will be great dissatisfaction in the community and much criticism of the administration of justice. Thirdly, predictability. Parties should be able to predict with some measure of accuracy the sum which is likely to be awarded in a particular case, for by this means cases can be settled peaceable and not brought to Court, a thing very much to the public good."

***Para-25*** . In BASAVARAJ v. SHEKAR, ILR 1987 KAR 1399, a Division Bench of this Court held :

"If the original position cannot be restored – as indeed in personal injury or fatal accident cases it cannot obviously be –the law must endeavour to give a fair equivalent in money, so far as money can be an equivalent and so make good the damage."

***Para-26.*** "Therefore, the general principle which should govern the assessment of damages in personal injury cases is that the Court should award to injured person such a sum of money as will, put him in the same position as he would have been in if he had not sustained the injuries. But, it is manifest that no award of money can possibly compensate an injured man and renew a shattered human frame."

***Para-27.*** Lord Morris of Borthy Gest in PARRY v. Cleaver, (1970) AC 1 at 22, said;

"To compensate in money for pain and for physical consequenencs is invariably difficult but…..no other process can be devised than that of making a monetary assessment."

***Para-28.*** The necessity that the damages should be full and adequate was stressed by the Court of Queen's BENCH IN FAIR VS. LONDON AND NORTH WESTERN RLY. CO., (1869) 21 LT 326. In RUSTON v. NATIONAL COAL BOARD, (1953) 1 ALL ER 314, Singleton LJ said;

"Every member of this Court is anxious to do all he can to ensure that the damages are adequate for the injury suffered, so far as they can be compensation for an injury, and to help the parties and others to arrive at a fair and just figure."

**Para-29**. FIELD, J. said in Phillips VS. SOUTH WESTERN RAILWAY CO. held:

"You cannot put the plaintiff back again into his original position, but you must bring your reasonable common sense to bear, and you must always recollect that this is the only occasion on which compensation can be given. (The plaintiff) can never sue again for it. You have, therefore, now to give him compensation, once and for all. He has done no wrong; he has suffered a wrong at the hands of the defendants and you must take care to give him full fair compensation for that which he has suffered."

Para-33. It is well settled principle that in granting compensation for personal injury, the injured has to be compensated (i) for pain and suffering; (2) for loss of amenities; (3) shortened expectation of life if any; (4) loss of earnings or loss of earning capacity or in some cases for both; and (5) medical treatment and other special damages. In personal injury actions the two main elements are personal loss and pecuniary loss. Chief Justice Cockburn in FAIR v. LONDON AND NORTH WESTERN RAILWAY CO., distinguished the above two aspects thus:

"In assessing the compensation the jury should take into account two things, first, the pecuniary loss the plaintiff sustained by accident secondly, the injury he sustains in his person, or his physical capacity of enjoying life. When they come to the consideration of the pecuniary loss they have to take into account not only his present loss, but his incapacity to earn a future improved income."

***Para-34***. Mc Gregor on Damages (14th Edition) para 1157, referring to the heads of damages in personal injury actions states:

"The person physically injured may recover both for his pecuniary losses and his non-pecuniary losses. Of these the pecuniary losses themselves comprise two separate items, viz., the loss of earnings and other gains which the plaintiff would have made had he not been injured and the medical and other expenses to which he is put as a result of the injury, and the Courts have sub-divided the non-pecuniary losses into three categories, viz., pain and suffering, loss of amenities of life and loss of expectation of life."

***Para-35***. Besides, the Court is well advised to remember that the measure of damages in all these cases should be such as to enable even a tort feasor to say that he had amply aloned for his misadventure. The observation of Lord Devlin that the proper approach to the problem or to adopt a test as to what contemporary society would deem to be fair sum, such as would allow the wrong doer to 'hold up his head among his neighbours and say with their approval that he has done the fair thing,' is quite apposite to be kept in mind by the Court in assessing compensation in personal injury cases."

***Para-42.*** LORD REID IN BAKER V. WILLOUGHBY said:

"A man is not compensated for the physical injury; he is compensated for the loss which he suffers as a result of that injury. His loss is not in having a stiff leg; it is in his inability to lead a full life, his inability to enjoy those amenities

which depend on freedom of movement and his inability to earn as much as he used to earn or could have earned……"

9. In view of the aforesaid decisions of the Supreme Court and also the judgment of the Karnataka High Court in which number of decisions of the House of Lords are referred, I feel, it would be just and proper to grant reasonable compensation of Rs.2,50,000/- (rupees two lakh fifty thousand) with interest at the rate of 9% per annum from the date of filing of the claim petition till the date of realization under all heads such as loss of amenity, pains and suffering, loss of marital life and enjoyment, allowances to be paid to his assistant whose services are very much required throughout his life, and I so direct. The compensation amount shall be computed and disbursed to the claimant-petitioner within four weeks from the date of receipt of the certified copy of this judgment.

The appeal is allowed.