

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/FIRST APPEAL NO. 3575 of 2013

FOR APPROVAL AND SIGNATURE:

HONOURABLE MS. JUSTICE SANGEETA K. VISHEN

Sd/-

| | | |
|---|---|-----|
| 1 | Whether Reporters of Local Papers may be allowed to see the judgment ? | No |
| 2 | To be referred to the Reporter or not ? | Yes |
| 3 | Whether their Lordships wish to see the fair copy of the judgment ? | No |
| 4 | Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ? | No |

SANJAY KALUBHAI MAKWANA

Versus

PASCHIM GUJARAT VIJ COMPANY LTD & 2 other(s)

Appearance:

MR AR THACKER(888) for the Appellant(s) No. 1

SHIVANG A THACKER(7424) for the Appellant(s) No. 1

DELETED for the Defendant(s) No. 3

MR PREMAL R JOSHI(1327) for the Defendant(s) No. 2

RULE SERVED for the Defendant(s) No. 1,2,3

CORAM:HONOURABLE MS. JUSTICE SANGEETA K. VISHEN

Date : 09/12/2022

ORAL JUDGMENT

1. The captioned appeal has been filed by the appellant praying for quashing and setting aside the judgment and decree dated 18.03.2013 passed by the learned Principal Senior Civil Judge,

Junagadh in Special Civil Suit no.72 of 2008 whereby, against the claim of Rs.10,00,000/- of the appellant, Rs.5,76,635/- has been awarded. The appellant further prays that the appellant is entitled for the remaining amount of Rs.4,23,365/- together with interest at the rate of 9% instead of 6% for the entire amount.

2. Facts, in nutshell, are that:

2.1. The appellant was employed by the contractor i.e. respondent no.3 (who is sought to be deleted vide order dated 08.11.2022), to work for respondent nos.1 and 2. The unfortunate incident took place on 24.07.2007, when the appellant sustained electrocution and as a result whereof, both the arms of the appellant were amputated.

2.2. It so happened that on 24.07.2007, electric connection of consumer Dhanjibhai Ranchodbhai Domadiya got disconnected owing to transformer having been burnt, which required its replacement. At the instance of officers of the respondent no.1, the transformer was to be replaced by the appellant and another labor. The assistant lineman of the respondent nos.1 and 2 were present at the office and the officers were under an obligation to switch off the electric supply during the process of repairing and replacement. The officers were informed to switch off the electric connection and accordingly, 11 KVA feeder of Aalidhra was switched off. It was informed that the line is clear; as a result whereof, the appellant and one another, started the work of replacement. The transformer was replaced; however, what was left was raising of the D.O. fuse and when the appellant was completing the said work, that the officer of the respondent nos.1 and 2, exhibiting negligence, started the electric supply as a result whereof, the appellant was electrocuted and got injured. The appellant was thereafter, shifted to the hospital of Medarda from which, he was referred to the Civil Hospital,

Junagadh. As advised, the appellant was then shifted to a private hospital. The appellant took treatment for around 8 to 10 days. As the situation went beyond control, that a decision was taken of amputating both the arms of the appellant and it is thereafter that the appellant took treatment for almost two months and had undergone as many as four operations.

2.3 At the time of the incident, the age of the appellant was 26 years. The appellant filed the suit being Special Civil Suit no.72 of 2008 seeking compensation for an amount of Rs.12,88,000/- under different heads namely:-

| | | |
|------|--|----------------|
| i. | The income of Rs.36,000/- (annual) and the future income of Rs.6,000/- | Rs.7,20,000/- |
| ii. | Pain, shock and suffering and mental agony and the future enjoyment | Rs.50,000/- |
| iii. | Fees towards operation, plaster, medicines and hospital expenditure so also the special diet | Rs.3,13,000/- |
| iv. | Transportation charges | Rs.5000/- |
| v. | Daily attendant charges | Rs.2,00,000/- |
| | Total compensation prayed for | Rs.12,88,000/- |

The appellant thereafter, reduced the compensation from Rs.12,88,000/- to Rs.10,00,000/-. The suit was tried and the learned Principal Senior Civil Judge, Junagadh, partly allowed the suit against the defendant nos.1 and 2. Whereas, the suit against defendant no.3 was rejected. The learned Judge ordered that the appellant is entitled to receive compensation for an amount of Rs.5,76,635/- (Rupees Five Lacs Seventy Six thousand Six hundred thirty five only) from the defendants at the rate of 6% interest. The defendants were also directed to pay the compensation accordingly. Being partly aggrieved, that the appellant has preferred the captioned appeal.

3. Mr. Shivang Thacker, learned advocate appearing for the appellant took this Court to the judgment dated 18.03.2013. It is submitted that the issues were framed vide Exhibit 32, namely, (i) whether the appellant proves that the contractor has employed the appellant on a monthly salary of Rs.3000/- for the purpose of Medarda sub-division? (ii) whether the appellant having sustained electric shock while doing work related to fuse because of the negligence of the respondent nos.1 and 2 and according to which, accident has taken place and during the treatment, to save the life, that both the arms of the appellant were amputated; (iii) the third issue was about proving the negligence of the respondents and the appellant having suffered disability and for which, the appellant is entitled for compensation of Rs.10 lacs.

3.1. It is submitted that the Principal Senior Civil Judge, Junagadh answered issue nos.1, 2, 3, 5 and 6 in affirmative. That on 24.07.2007, transformer was required to be replaced for which, the appellant was engaged. It is also not in dispute that the contract was given to the contractor which aspect is strengthened by the affidavit of the appellant. It has also been observed by the learned Judge that there is no dispute that the appellant was engaged by the contractor for the purpose of carrying out the work of Medarda sub-division and was paid Rs.3,000/- per month. Mr. Shivang Thacker, learned advocate, however, fairly submitted that the appellant was not an employee of defendant nos.1 and 2.

3.2. So far as issue no.2, which is about the negligence on the part of the respondent nos. 1 and 2 is concerned, it is submitted that the learned Judge has recorded that the defendants have accepted that the whole incident has taken place due to the negligence on their part. The aspect of sustaining electric shock is also recorded so also, the aspect of amputation. Reference is also made of the injury

certificate exhibit 110 and the expenses incurred towards medical treatment vide exhibit 111. It is submitted that the disability certificate was issued while relying upon the guidelines which were produced vide exhibit 123. As per item no.7 of the guidelines, for evaluation of permanent physical impairment and amputees, if the amputation is below elbow upto lower one third of forearm, the same is to be treated as 65% disability. It is submitted that the observation that as the guidelines provides for 65% disability, it cannot be said that the appellant has sustained 100% disability, would be erroneous, considering the fact that item no.1 of the guidelines indicates that in case of multiple amputees, if the total sum of percentage permanent physical impairment is above 100%, it should be taken as 100%. It is submitted that what has been lost sight of, is the fact, that the appellant has sustained amputation of both the arms and if 65% is considered, the total disability of both arms would be around 130% and not 65%. Had it been only one arm, the matter would have been different. However, in the present case, amputation is of both the arms and therefore, it has to be treated as 100% disability. It is next submitted that Dr.Chandrakant Jansukhram Nanavati was examined at exhibit 119, who has confirmed the aspect that the arms were amputated and the disability has been assessed at 84%. It has been concluded that so far as the incident is concerned, it is not in dispute that on the date of the incident, since the power supply started, owing to the negligence on the part of the defendants, that the incident has taken place. With this observation, that the issue no.2 was decided in affirmative.

3.3. Similarly, issues nos. 3 and 6, were decided together, namely, the aspect of disability. The aspect of disability has been discussed in paragraph 15. It is submitted that exhibit 107 was taken note of which, is the certificate issued by the Chief District Medical Officer-

cum-Civil Surgeon, Civil Hospital, Junagadh certifying that the appellant has sustained 100% disability on permanent basis. Reference is also made of the deposition of Dr. Mukeshbhai Vallabhbai Mendpara, exhibit 127 who, accepted the fact that disability certificate has been issued as per the guidelines. Reference is made of item no.7 which provides for percentage of disability. While discussing the aspects of disability and compensation, the learned Judge has awarded Rs.5,76,635/-. It is submitted that in fact, exhibit 107 i.e. the certificate issued by the Chief District Medical Officer-cum-Civil Surgeon, Civil Hospital, Junagadh, has assessed the disability of 100%. It is submitted that injury certificate has been issued vide exhibit 110 by Dr.Mendpara who has described the injuries sustained. In his examination-in-chief vide exhibit 127, while explaining the injury certificate exhibit 110, the doctor, has admitted that the appellant has sustained 100% disability. Furthermore, the guidelines, provide for evaluation of permanent physical impairment and amputees and item no.1, deals with the multiple amputees, which states that if the total sum of percentage permanent physical impairment is about 100%, it should be taken as 100%. Therefore, considering the contents of exhibit 119 in juxta position with the deposition exhibit 127, together with the certificate for the person with disability issued by the Chief District Medical Officer-cum-Civil Surgeon, Civil Hospital, Junagadh, by no stretch of imagination, it can be said that the appellant has sustained injury to the extent of 64%. Also, the photographs at exhibit 121 show that the appellant has sustained disability of 100%. Reliance is placed on the judgment of the Apex Court in the case of *Pappu Deo Yadav v. Naresh Kumar* reported in AIR 2020 SC 4424.

3.4. While advertng to the head of prospective income, it is submitted that the appellant was 26 years of age and was paid

Rs.3,000/- per month. The learned Judge has adopted the multiplier of 17 as per the judgment of the Apex Court in the case of *National Insurance Company Limited v. Pranay Sethi* reported in 2017 (16) SCC 680. In paragraph 59.4, the Apex Court has held and observed that in case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. Admittedly, in the present case, the appellant at the time of the incident was 26 years and was getting a fixed salary of Rs.3,000/- and therefore, he was entitled for addition of 40% on the established income. 40% of Rs.3,000 would come to Rs.1200 and therefore, the total income of the appellant should have been considered as Rs.4200/-; multiplying the same with 12, the same would come to Rs.50,400/- and taking the multiplier of 17 and 100% disability, the same would come to Rs.8,56,800/-; instead the learned Judge has considered the income of the appellant at Rs.3000/- per month and awarded only a meager amount of Rs.3,97,800/-. It is further submitted that the interest awarded, is 6%. In fact, the appellant would be entitled for the interest at the rate of 9% on the enhanced compensation. Hence, it is urged that the appeal deserves to be allowed.

4. On the other hand, Mr. Premal Joshi, learned advocate appearing for the respondents, submitted that it is not in dispute that the appellant is not the employee of the respondent but, of the contractor. In his cross-examination, the appellant has admitted that he is the employee of the contractor and the salary is being paid by the contractor. It is admitted by the appellant that he has neither worked for PGVCL nor PGVCL has paid the salary. Also, there is an admission on the part of the contractor that the contractor has made the payment of the medical expenses.

4.1. It is further submitted that in the examination-in-chief of one

of the witnesses i.e. Dr.Madhubar Chatrabhuj Parekh of the Junagadh Civil Hospital, he has stated that the appellant was admitted as an indoor patient on 24.07.2007 and, on that very same day, at around 8:40 p.m., the patient ran away from the hospital. It is therefore, submitted that the appellant left the hospital without taking any medical treatment. Moreover, one of the witnesses i.e. Dr.Mukeshkumar Vallabhbai Mendpara, who was examined at Exh. 127, in his cross-examination, has stated that the injury sustained by the patient can be assessed to the extent of 65% as per the guidelines for Evaluation of Permanent Physical Impairment in Amputees and therefore, the case of the applicant - appellant that there is a 100% disability, is not correct. It is submitted that no error has been committed by the learned Judge in computing the compensation, considering the disability of 65% and therefore, appeal be not entertained. So far as the aspect of future income is concerned, it is fairly stated before this Court that it cannot remain the same.

5. Heard the learned advocates appearing for the respective parties, perused the documents available on record and accorded thoughtful consideration to the submissions made.

6. It is not in dispute that on 24.07.2007, there was no power supply available as the transformer was burnt and as a result whereof, the transformer was to be replaced. The appellant having been engaged by the contractor, started the work of replacing the transformer. When the transformer was to be replaced, the office of the respondent was informed to switch off the power supply and lineman - Mr.Gopal Govardhan Kalola has switched off the 11 KVA feeder and gave the appellant clearance. The transformer then was replaced. After replacement, certain formalities relating to the fuse were to be completed and only thereafter, the lineman was to

switch on the feeder, instead, without waiting for any clearance and when the appellant was switching on the fuse, that the employee of the PGVCL started the power supply and the appellant was electrocuted. Immediately thereafter, the lineman was informed about the incident and power supply was switched off. It is an admitted fact that the appellant got electrocuted owing to the negligence of the respondents and had thus sustained injuries.

7. The appellant thereafter, was taken to Junagadh civil hospital and subsequently, the appellant was admitted to a private hospital where, he took treatment and during the treatment and with a view to saving his life, one arm of the appellant was amputated and after the span of another 12 days, during the course of further treatment, another arm of the appellant was amputated. The appellant has taken treatment for almost more than two months. The appellant thereafter, filed a suit praying for compensation and the learned Judge framed the issues, free english translation would be thus:-

“1. Whether the plaintiff proves that the defendant no.3 has employed the appellant and another employee on the monthly salary of Rs.3000/- and other allowances for the purpose of Medarda sub division?

2. Whether the plaintiff proves that he has sustained electric shock while doing the work related to fuse because of the negligence of defendant nos. 1 and 2 of starting the electric supply and the accident has taken place and that during the treatment, to save the life, both the arms were amputated?

3. Whether the plaintiff proves that owing to the negligence, he has suffered disability and for which, is entitled to compensation of Rs.10,00,000/- together with interest at the rate of 12% from the defendant?

4. Whether the defendants prove that the Court has no jurisdiction to try the suit?

5. Whether the defendant proves that the appellant is not ex-employee?

6. Whether the plaintiff proves that he is entitled for the reliefs as prayed for.

7. Final order and decree.

8. Issue nos.1,2,5 and 6 were answered in affirmative. Issue no.3 was answered partly in affirmative and issue no.4 was answered in negative. So far as issue no.1 is concerned, the engagement of the appellant by the contractor for an amount of Rs.3000/- is not in dispute. Issue no.2, as to whether, it is because of the negligence of respondent nos.1 and 2 in switching on the electric supply, that the appellant has sustained electric shock and as a result, both the arms of the appellant were amputated, is also not in dispute. Negligence has been decided against the respondents so also, taking place of the accident. Issue no.3 was that owing to the accident, the appellant has sustained disability and that the appellant is entitled to recover Rs.10,00,000/- together with 12% interest from the respondents which, as aforesaid, was partly answered in affirmative. Issue no.2, though was decided against the respondents and in favour of the appellant, no appeal has been filed by the respondents challenging the said judgment and therefore, the point for determination in the present appeal would be as to whether, the learned Judge was correct in assessing the disability of 65% of the appellant and consequently, awarding compensation to the tune of Rs.5,76,635/-. The breakup of the compensation awarded is as under:

| Sr. | Head | Amount |
|-----|---|---------------|
| 1. | Future loss of income (3000 x 12 x 17) - 65% | Rs.3,97,800/- |
| 2. | pain, suffering and future hope and happiness | Rs.30,000/- |
| 3. | transportation and special diet | Rs.10,000/- |
| 4. | doctor's fee, operation and hospital | Rs.1,32,200/- |

| | | |
|----|--|---------------|
| | expenditure | |
| 5. | additional medicines taken from outside the hospital during the treatment- | Rs.6,635/- |
| | Total | Rs.5,76,635/- |

9. So far as the item no.1 is concerned, the learned Judge has assessed the income of Rs.3000/-, adopting multiplier of 17 and assessing the disability at 65% and total compensation has been calculated at Rs.3,97,800/-. Taking the disability first, it is required to be noted that negligence is not in dispute so also, the amputation. The disability has been assessed as per the guidelines for Evaluation of Permanent Physical Impairment in Amputees (hereinafter referred to as "the guidelines"), which read thus:

"Basic Guidelines

1. In case of multiple amputees, if the total sum of percentage permanent physical impairment is above 100%, it should be taken as 100%.
2. Amputation at any level with uncorrectable inability to wear and use prosthesis, should be given 100% permanent physical impairment.
3. in case of amputation in more than one limb, percentage of each limb is counted and another 10% will be added, but when only toes or fingers are involved only another 5% will be added.
4. Any complication in form of stiffness, neuroma, Infection etc. has to be given a total of 10% additional weightage.
5. Dominant upper limb has been given 4% extra percentage.

| | |
|------------------------|--|
| Upper Limb Amputations | Percent Permanent Physical Impairment and loss of physical |
|------------------------|--|

| | function of each limb |
|--|-----------------------|
| 1. Fore-quarter amputation | 100% |
| 2. Shoulder Disarticulation | 90% |
| 3. Above Elbow upto upper 1/3 of arm | 85% |
| 4. Above Elbow upto lower 1/3 of arm | 80% |
| 5. Elbow disarticulation | 75% |
| 6. Below Elbow upto upper 1/3 of forearm | 70% |
| 7. Below Elbow upto lower 1/3 of forearm | 65% |
| 8. Wrist disarticulation | 60% |
| 9. Hand through carpal bones | 55% |
| 10. Thumb through C.M. or through 1 st MC Joint | 30% |
| 11. Thumb disarticulation through metacarpophalangeal joint or through proximal phalanx. | 25% |
| 12. Thumb disarticulation through interphalangeal joint or through distal phalanx. | 15% |

10. Paragraph 1 of the guidelines provides that in case of multiple amputees, if the total sum of percentage of permanent physical impairment is above 100%, it should be taken as 100%. Paragraph 3 provides that in case of amputation in more than one limb, percentage of each limb is counted and another 10% is to be added. Item no.7 of the tabular form provides that if the amputation is below elbow upto lower 1/3rd of forearm, the same is to be treated as 65%. In the present case, it is not in dispute and further fortified by the photograph exh.121 that both the arms of the appellant have been amputated below the elbow upto the forearm. The appellant was working as a helper and for performance of such work, arms would be vital organ. If both the arms have been amputated, it is difficult to comprehend as to how, and what work, now, the

appellant would be able to perform.

11. Quite apart, the evidence on record would strengthen the fact that the appellant has sustained 100% disability. Firstly, certificate issued for the person with the disabilities by the Chief District Medical Officer-cum-Civil Surgeon, Civil Hospital Junagadh which, in no uncertain terms, states "he is physically disabled and has 100% (hundred percent) permanent disability, physical impairment in relation to his loss of limb. Secondly, injury certificate has been issued by Dr.M.V. Mendpara, M.S., M.Ch. (Plastic surgery), Junagadh dated 20.09.2007 which, after describing the injury and the impact of the injury, had certified that both the hands upto mid part of both the forearms, have been amputated. The doctor was examined. In his chief, in vernacular, free english translation would be "it is true that the patient, as per the certificate exh.110, has sustained 100% disability". During his cross-examination, he has stated that the certificate has been issued as per the guidelines and as per item no.7 of the tabular form, if the amputation is below elbow upto lower one-third of forearm, disability is to be treated as 65% and as per the guidelines, it cannot be treated as 100%.

12. At this juncture, it is required to be noted that guidelines provide that in case of multiple amputees, if the total sum of percentage of permanent physical impairment is 100%, it should be taken as 100%. Paragraph no.3 provides that in case of amputation in more than one limb, percentage of each limb is counted and another 10% shall be added. In the present case, it is not that the appellant has sustained amputation only of one arm but, his both the arms below elbow upto lower one third of forearm, have been amputated and if disability of 65% each, is to be counted then, it would definitely be more than 100%. This aspect perhaps has been missed by the learned Judge. Another doctor - Dr.Chandrakant

Jansukhram Nanavati was also examined on affidavit, who has assessed the disability at 84%. In his deposition, he has stated that because of the amputation of both the arms, it will not be possible for the patient to perform any of the activities. Also, Schedule - I of the Workmen's Compensation Act, 1923 provides for injuries deemed to result in permanent total disablement, if both the hands are lost or amputation, on higher side, that would be 100%.

13. Perceptibly, the appellant has lost both his arms and as discussed hereinabove, it is difficult to comprehend as to whether, the appellant would be in a position to perform any vocation. In fact, leave aside the vocation, the appellant would be dependent upon the family members or others for performing his day-to-day activities. Apt would be judgments cited by the learned advocate appearing for the appellant. In the case of Pappu Deo Yadav (supra), it has been held and observed that the Courts should not adopt a stereotypical or myopic approach, but instead, view the matter taking into account the realities of life, both in the assessment of the extent of disabilities, and compensation under various heads. The Apex Court has held and observed that what is to be seen, is the impact of the injury upon the income generating capacity of the victim. The loss of a limb (a leg or arm) and its severity on that account is to be judged in relation to the profession, vocation or business of the victim; there cannot be a blind arithmetic formula for ready application.

14. In the aforesaid case, the appellant was working as a data entry operator/typist and while he was travelling, he met with an accident. The appellant therein suffered injuries and his right upper limb was amputated. The disability was assessed to be 45% by the Motor Accident Claims Tribunal. The total compensation was reassessed; however, the appellant aggrieved, preferred an appeal

before the Apex Court and as discussed hereinabove, after considering various judgments, in paragraph 20, 21 and 22, it has been observed thus:-

“20. Courts should not adopt a stereotypical or myopic approach, but instead, view the matter taking into account the realities of life, both in the assessment of the extent of disabilities, and compensation under various heads. In the present case, the loss of an arm, in the opinion of the court, resulted in severe income earning impairment upon the appellant. As a typist/data entry operator, full functioning of his hands was essential to his livelihood. The extent of his permanent disablement was assessed at 89%; however, the High Court halved it to 45% on an entirely wrong application of some ‘proportionate’ principle, which was illogical and is unsupportable in law. What is to be seen, as emphasized by decision after decision, is the impact of the injury upon the income generating capacity of the victim. The loss of a limb (a leg or arm) and its severity on that account is to be judged in relation to the profession, vocation or business of the victim; there cannot be a blind arithmetic formula for ready application. On an overview of the principles outlined in the previous decisions, it is apparent that the income generating capacity of the appellant was undoubtedly severely affected. Maybe, it is not to the extent of 89%, given that he still has the use of one arm, is young and as yet, hopefully training (and rehabilitating) himself adequately for some other calling. Nevertheless, the assessment of disability cannot be 45%; it is assessed at 65% in the circumstances of this case.

21. This court is also of the opinion that the courts below needlessly discounted the evidence presented by the appellant in respect of the income earned by him. Working in the informal sector as he did, i.e. as a typist/data entry operator in court premises in Delhi, his assertion about earning ₹12,000/- could not be discarded substantially, to the extent of bringing it down to ₹ 8,000/- per month. Such self employed professionals, it is noticeable, were not obliged to file income tax returns for AY 2011-2012, when no levy existed for anyone earning less than ₹ 1,60,000/- per annum.²⁹ The advocate who deposed about the earnings of the appellant was believed to the extent that the tribunal fixed the appellant’s monthly earnings at ₹ 8,000/-. If one takes into account contemporary

minimum wages for skilled workers (which was in the range of ₹ 8,500/-) the realistic figure would be ₹10,000/- per month. Adding future prospects at 40%30, the income should be taken as ₹14,000 for the purpose of calculation of compensation. Accordingly, this court finds that the compensation payable for the disability of loss of an arm (assessed at 65%) would be ₹19,65,600/- (i.e., ₹ 14,000/- x 12 x 65% x 18) or Rupees Nineteen lakhs sixty five thousand six hundred only.

22. In parting, it needs to be underlined that Courts should be mindful that a serious injury not only permanently imposes physical limitations and disabilities but too often inflicts deep mental and emotional scars upon the victim. The attendant trauma of the victim's having to live in a world entirely different from the one she or he is born into, as an invalid, and with degrees of dependence on others, robbed of complete personal choice or autonomy, should forever be in the judge's mind, whenever tasked to adjudge compensation claims. Severe limitations inflicted due to such injuries undermine the dignity (which is now recognized as an intrinsic component of the right to life under [Article 21](#)) of the individual, thus depriving the person of the essence of the right to a wholesome life which she or he had lived, hitherto. From the world of the able bodied, the victim is thrust into the world of the disabled, itself most discomfiting and unsettling. If courts nit-pick and award niggardly amounts oblivious of these circumstances, there is resultant affront to the injured victim."

15. In yet another judgment of the Apex Court in the case of *K. Janardhan vs. United India Insurance Company Limited* reported in (2008) 8 SCC 518, the claimant therein sustained injury and has lost the leg, which amounted to 60% reduction in the earning capacity as 65% disability was assessed. Applying the ratio of the judgment in the case of *Pratap Narain Singh Deo vs. Srinivas Sabata* reported in (1976) 1 SCC 289, the Apex Court held and observed that the appellant has suffered 100% disability and incapacity in earning his keep as a tanker driver, as his right leg has been amputated from the knee.

16. In another judgment of the Apex Court in the case of Jithendran vs. New India Assurance Co. Ltd. reported in AIR 2021 SC 5382, it has been held and observed that the appellant was a young boy, aged 21 years and had suffered injuries. He suffered severe impairment of cognitive power with hemiparcesis and total aphasia and prognosis and disability was certified at 69%. The Apex Court observed that the said disability by no means, adequately reflects the travails the impaired claimant will have to face all his life. Paragraphs 10, 14 and 15 of the said judgment read thus:-

“10. While the permanent disability as certified by the doctors stands at 69%, the same by no means, adequately reflects the travails the impaired claimant will have to face all his life. The 21 year old's youthful dreams and future hopes were snuffed out by the serious accident. The young man's impaired condition has certainly impacted his family members. Their resources and strength are bound to be stressed by the need to provide full time care to the claimant. For the appellant to constantly rely on them for stimulation and support is destined to cause emotional, physical and financial fatigue for all stakeholders.

14. The test for determining the effect of permanent disability on future earning capacity involves the following 3 steps as was laid down in Raj Kumar and reiterated by Justice Indu Malhotra in Chanappa Nagappa Muchalagoda vs. Divisional Manager, New India Insurance Company Limited.

“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 5Ibid 6(2020)1 SCC 796 so that he continues to earn or can continue to earn his livelihood.”

15. The above yardstick to be adopted in such exigencies was reaffirmed by Justice S. Ravindra Bhat in Pappu Deo Yadav vs. Naresh Kumar and others. The following was set out by the three Judges' Bench:

“13. The factual narrative discloses that the appellant, a 20-year-old data entry operator (who had studied up to 12th standard) incurred permanent disability, i.e. loss of his right hand (which was amputated). The disability was assessed to be 89%. However, the tribunal and the High Court re-assessed the disability to be only 45%, on the assumption that the assessment for compensation was to be on a different basis, as the injury entailed loss of only one arm. This approach, in the opinion of this court, is completely mechanical and entirely ignores realities. Whilst it is true that assessment of injury of one limb or to one part may not entail permanent injury to the whole body, the inquiry which the court has to conduct is the resultant loss which the injury entails to the earning or income generating capacity of the claimant. Thus, loss of one leg to someone carrying on a vocation such as driving or something that entails walking or constant mobility, results in severe income generating impairment or its extinguishment altogether. Likewise, for one involved in a job like a carpenter or hairdresser, or machinist, and an experienced one at that, loss of an arm, (more so a functional arm) leads to near extinction of income generation. If the age of the victim is beyond 40, the scope of rehabilitation too diminishes. These individual factors are of 7(2020) SCC Online 752 crucial importance which are to be borne in mind while determining the extent of permanent disablement, for the purpose of assessment of loss of earning capacity.” “20. Courts should not adopt a stereotypical or myopic approach, but instead, view the matter taking into account the realities of life, both in the assessment of the extent of disabilities, and compensation

under various heads. In the present case, the loss of an arm, in the opinion of the court, resulted in severe income earning impairment upon the appellant. As a typist/data entry operator, full functioning of his hands was essential to his livelihood. The extent of his permanent disablement was assessed at 89%; however, the High Court halved it to 45% on an entirely wrong application of some 'proportionate' principle, which was illogical and is unsupportable in law. What is to be seen, as emphasized by decision after decision, is the impact of the injury upon the income generating capacity of the victim. The loss of a limb (a leg or arm) and its severity on that account is to be judged in relation to the profession, vocation or business of the victim; there cannot be a blind arithmetic formula for ready application. On an overview of the principles outlined in the previous decisions, it is apparent that the income generating capacity of the appellant was undoubtedly severely affected. Maybe, it is not to the extent of 89%, given that he still has the use of one arm, is young and as yet, hopefully training (and rehabilitating) himself adequately for some other calling. Nevertheless, the assessment of disability cannot be 45%; it is assessed at 65% in the circumstances of this case."

17. Therefore, test for determining the effect of permanent disability on the actual earning capacity, is very much relevant. Three steps have been set out, namely, (i) to ascertain as to what activities, the claimant could carry out in spite of the permanent disability; what he could not do as a result of the permanent disability (ii) ascertaining his avocation, profession and nature of work before the accident, as also his age and (iii) to find out as to whether, the claimant is totally disabled from earning any kind of livelihood, or 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 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.

The disability, which the appellant has sustained, is writ large.

18. During the course of the argument, this Court inquired as to whether, the appellant is doing any work. The reply was in negative and rightly so, as without the arms, it is difficult, rather impossible for any human being to undertake any vocation or profession. Therefore, considering the facts and the principles, the learned Judge committed an error in accepting the disability of the appellant as 65%, which would be arbitrary and perverse.

19. While advertng to the another head of the prospective income, the same also deserves to be answered in favor of the appellant, as the learned Judge has considered the income of the appellant as Rs.3,000/-, adopting the multiplier of 17 and it has been calculated at Rs.3,97,800/-. The learned Judge has not awarded any rise in the prospective income. The Apex Court in the case of *National Insurance Company Limited vs. Pranay Sethi (supra)* has laid down that in case, the deceased is self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where, the deceased was below the age of 40 years. In the judgment in the case of Pappu Deo Yadav (supra), the Apex Court in paragraph 12, while considering the earlier judgments of the Apex Court, held that the High Court erred in holding that compensation for loss of future prospects could not be awarded. The Apex Court held that the appellant is entitled to compensation for loss of future prospects at 40%, following the principles laid down in the case of *National Insurance Company Limited vs. Pranay Sethi (supra)*.

20. The learned advocate appearing for the respondents has fairly submitted that the future income cannot remain the same. Adopting Rs.3000/- as the income without any multiplier, would be an erroneous exercise. The learned Judge ought to have considered

40% of Rs.3000/-, that would come to Rs.1200/-. Adding Rs.1200/- to Rs.3000/-, it would come to Rs.4200/-. Therefore, the additional compensation, treating the same as Rs.4200/- x 12 x 17 as 100% disability, would come to Rs.8,56,800/-. Mr.Thacker, learned advocate has stated before this Court that the total amount of compensation which was asked for, was Rs.10 lacs and therefore, he restricts his case only qua the compensation of Rs.10 lacs.

21. In view of the aforementioned discussion, the point of determination is to be answered accordingly. The learned Judge was not right in assessing the disability of the appellant at 65% and resultantly, awarding compensation to the tune of Rs.5,76,635/-. Under the circumstances, the appellant would be entitled for compensation of Rs.10 lacs. Hence, the judgment and decree dated 18.03.2013 passed by the learned Principal Senior Civil Judge, Junagadh in Special Civil Suit No.72 of 2008 is hereby modified and it is declared that the appellant would be entitled for additional compensation of Rs.4,23,365/- (Rs.10,00,000/- - Rs.5,76,635/- = Rs.4,23,365/-). The respondents are directed to pay an additional compensation of Rs.4,23,365/- to the appellant within a period of two months from today, with interest at the rate of 9% from the date of filing of the captioned appeal i.e. 17.10.2013.

22. The appeal stands allowed. Record & Proceedings, if any received, be sent back to the concerned Court forthwith.

No order as to cost.

Sd/-

(SANGEETA K. VISHEN,J)

Ravi / Hitesh