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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Decided on: 25.09.2019*

+ MAC.APP. 804/2019 & CM APPL. 43097/2019

AALAM @ M. SHAMSHAD ALAM Appellant

Through: Mr. Ravi Sabharwal, Advocate.

versus

BRIJESH SHUKLA @ MANOJ & ORS (IFFCO TOKIO GENERAL
INSURANCE CO LTD) Respondents

Through: Ms. Shantha Devi Raman and Mr.
Arihant Jain, Advocates for insurance
company.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Oral)

CM APPL. 43096/2019 (for delay)

1. For the reasons mentioned in the application, the delay is condoned.
2. The application stands disposed-off.

MAC.APP. 804/2019 & CM APPL. 43097/2019

3. Issue notice.
4. The learned counsel named above accepts notice on behalf of the insurance company.
5. At joint request, the appeal is taken up for disposal.
6. The appellant impugns the award of compensation dated 08.02.2019 passed by the learned MACT in MACP No. 153/14, on the ground that for amputation resulting in 60% disability in the right lower limb of the appellant, the learned Tribunal has erred in considering the functional disability only upto 50%. The appellant was employed as a

clerk in a transport company, his duties included maintenance of records of the goods being transported from one place to the other as well as accompanying the goods in the transporting vehicle. It is on one such trip that the unfortunate accident occurred and he suffered the amputation of his right lower limb.

7. The amputation was necessitated because the earlier two surgical interventions, wherein initially three toes of the right lower limb were amputated and the ankle area crushed, in the motor vehicular accident, has not healed. He went through an ordeal trying to heal the extensive injuries on his leg. There was no improvement in his condition. The doctor who performed the surgery of amputation noted that there were holes in the injured leg, pus was oozing out from it and there was no option but to amputate a portion of the leg, otherwise it would logically have caused further complications to the rest of the body of the appellant.
8. The appellant was out of work for almost a year. After rejoining his duties on 02.05.2015 with the same employer, he had to leave it on 30.09.2015, as he was unable to discharge his duties and was otherwise finding it very difficult to move about. In other words, he had become dysfunctional apropos his earlier employment.
9. The impugned award has granted the following compensation:

S. No.	Name of Heads	Compensation
1.	Medicine and treatment	Rs. 69,068/-
2.	Loss of actual earnings	Rs. 1,35,307/-
3.	Loss of future earnings due to	Rs. 11,40,555/-

	disability	
4.	Pain and suffering	Rs. 2,00,000/-
5.	Loss of amenities	Rs. 1,00,000/-
6.	Conveyance, special diet and attendant charges	Rs. 45,000/-
7.	Cost of prosthetic and its maintenance	Rs. 2,00,000/-
Total		Rs. 18,89,930/-

10. The learned counsel for the appellant argues that the functional disability is 100% and compensation should be paid accordingly. The doctors have opined that the prosthetic limb needs to be fitted on the amputated leg to enable the appellant to move about. He had earlier submitted bills for provision of a prosthetic limb costing between Rs. 6,00,000/- to Rs. 19,00,000/-. In an earlier proceeding, the case was remanded by this Court to the learned Tribunal, which having reconsidered the case afresh had awarded an amount of only Rs. 2,00,000/- towards provision of a prosthetic limb. Apropos the degree of amputation and its effects on the appellant, the impugned order has observed as under:

“....

It is observed that in his affidavit Ex. PW3/A filed on record, the petitioner has stated that after the accident he was removed to AllMS Trauma Centre and from there, on the next day, he was shifted to Safdarjung Hospital for treatment and he remained hospitalized there from 20.05.2014 till 27.06.2014 and thereafter, he had got his treatment from the said hospital as an OPD patient. He also stated therein that

even thereafter, he was admitted in Akash Healthcare on 03.11.2014 and discharged on 04.11.2014 and his right leg below knee level was amputated by doctors in the said hospital. He further tendered on record, inter alia, the discharge summaries of Safdarjung Hospital and Akash Healthcare Polyclinic as Ex. PW3/5 and Ex. PW3/6 respectively, his various OPD cards as Ex. PW3/7 and original medical bills and payment receipts as Ex. PW3/8. Besides the above, his MLC and admission assessment and transfer form have also been brought in evidence during the testimony of PW5 Dr. Aditya Swaroop of AIIMS Trauma Centre as Ex. PW5/1 and Ex. PW5/3, as already discussed above.

On perusal of MLC of the petitioner prepared in AIIMS Trauma Centre, which is a part of the documents Ex. PW5/1, it is observed that the nature of injuries suffered by the petitioner was declared as grievous by doctors of the said hospital. The discharge summary of the petitioner Ex. PW3/5 given by Safdarjung Hospital shows that he was admitted in the said hospital on 20.05.2014 and his diagnosis was compound grade III fracture distal BB right leg with fracture 2nd, 3rd and 4th metatarsel and during the course of his hospitalization and treatment in the said hospital, he was subjected to different surgeries for fixation of above fracture injuries and his three toes had also to be removed/amputated.

His discharge summary Ex. PW3/6 of Alkash Healthcare further shows that during the course of his further hospitalization in the said hospital from 03.11.2014 to 04.11.2014, even his right leg below knee level was advised to be amputated and another discharge summary of petitioner of Tarak Hospital has also been brought on record during the testimony of PW7 Dr. Ashish Choudhary and the above discharge summaries and the depositions made by this witness show that the amputation of right leg of the petitioner was though planned in Akash Healthcare by the doctors, but it was actually done in Tarak Hospital by PW7. The depositions made by PW7 during his cross-examination before this tribunal further show the pitiable condition of right leg of the petitioner requiring an immediate amputation thereof. Some of the relevant depositions made by this

witness during his cross-examination are being reproduced herein-below:-

" When the patient came to the clinic, the patient's right leg was having a external fixator attached to the right leg and the leg and foot was swollen and discharging dirty fluid and also three toes of his right foot were missing (previously amputated). There were multiple scars on the leg and foot because of previous injury and previous surgeries. The X-rays of the right leg showed damage of the leg bones and foot bones beyond repair and there was significant loss of bone density. The distal pulses were not felt on examination and patient did not have proper sensations of the foot and the lower leg. Based on our clinical assessment, we advised the patient below knee amputation. I examined the previous treatment record of Safdarjung hospital where it was clearly mentioned that the patient had a vascular injury in right leg at the time of accident and attempt was made by doctors at Safdarjung hospital to save the limb. Multiple surgeries were done at Safdarjung hospital including amputation of the toes".

Further, the depositions made by PW1 Dr. Shweta Jain show that the percentage of permanent disability suffered by the petitioner due to the above amputation of his right leg was 60% in opinion of their disability board in respect of that particular leg. However, it is the contention of Ld. Counsel for petitioner that the disability of the petitioner should be taken as 100% since the nature of his work and job was of field, whereas the contention of Ld. Counsel for R3/Insurance Company is that it should be taken as 30% only in accordance with the settled legal propositions as the petitioner can still do certain desk or sitting jobs.

In this regard, it is observed that in his above affidavit Ex. PW3/A, the petitioner claims that he was working with the above company as a clerk (operations) and he nowhere claimed in the said affidavit that his job required any field work. Even PW4 Ms. Khusboo Arora stated during her examination-in-chief itself that the petitioner was appointed in their organization as a dispatch clerk only. But it is also

observed that during her examination-in-chief itself, she has further stated in clear and specific terms that the job of petitioner was a field job. However, still it cannot be ignored that as per the depositions made by petitioner and the other evidence led on record, which will be discussed under the head pertaining to liability, the petitioner at the relevant time of accident was accompanying the goods of his company being transported in the said vehicle. Hence, even though, the appointment of petitioner in the above said company might have been as a clerk, but the evidence led on record establishes to the reasonable satisfaction of this tribunal that the nature of his job also included some sort of field work.

It is also necessary to discuss here on this aspect that during the course of cross-examination of PW7 Dr. Ashish Choudhary, who had conducted the above surgery of petitioner for amputation of his leg below knee level, this tribunal has specifically drawn his attention towards the different categories of amputation of knee mentioned at serial nos. 19 to 21 of the list given in Schedule I of the Employees Compensation Act, 1923. Schedule I of the Employees Compensation Act, 1923 contains a list of the injuries which are deemed to result in permanent total disablement of the employees and also the percentage of loss of earnings caused by these injuries, for the purposes of determination of compensation under the said Act. The witness was specifically asked as to in which particular clause or serial number, the case of petitioner would fall. It is also necessary to mention here that the items 19 to 21 of the said list deal with amputation of employees at different levels of the knee. After this witness had taken the measurements of the left over 'stump' of the petitioner below knee level, the witness has stated on record that the case of petitioner will fall in category 21 given in the list. This category or Article of the list is attracted when the left over 'stump' of a person exceeds 12.70 cms and the given percentage of loss of earning capacity of a person due to this amputation is mentioned as 50% against the said Article/item 21 of the list.

Hence, in the considered opinion of this tribunal and on the basis of oral and documentary evidence led on record and the other attending facts and circumstances, the

functional disability of the petitioner in the present case affecting his earning capacity was rightly assessed by the tribunal in its previous judgment as 50% and the same does not call for any interference or review even on re-appreciation of the evidence.

In its previous judgment, the age of petitioner on the basis of his election ID card Ex. PW3/12 was taken as around 47 years at the time of accident. During the course of further inquiry, the petitioner has also brought on record certain other documents in respect of his age and these consist of a copy of his Aadhar card and PAN card as Ex. PW3/12 and Ex. PW3/13 respectively and in both these documents, his date of birth is specifically found to be mentioned as 22.01.1967. Hence, even as per these documents, the age of petitioner comes to 47 years and around 4 months at the time of accident.

In its earlier judgment, this tribunal has also observed that since under the previous head, the petitioner has already been compensated for the loss of earnings for a period of around one year for not attending his duties due to the said injuries, the multiplier applicable after one year from the date of accident is to be adopted for assessing the loss of his future earnings. However, the same multiplier of 13 is found applicable with reference to date of accident and even one year thereafter, in view of the law laid down by the Hon'ble Supreme Court in cases of Sarla Verma & Ors. Vs. Delhi Transport Corporation & Anr., (2009) 6 SCC 121, which has also been approved in the Constitution Bench decision of the Hon'ble Supreme Court in the case of National Insurance Company Ltd. Vs. Pranay Sethi & Ors. SLP (Civil) No. 25590 of 2014, decided on 31.10.2017.”

11. As noted hereinabove, the functional disability of the appellant having been affected far beyond the 50% physical disability, compensation for the same needs to be enhanced. Keeping in mind that the other leg of the injured is fully functional and his two upper limbs also are unaffected by the accident, he would therefore be able to earn a living,

perhaps in a different vocation, provided his mobility is optimised by provision of a good-quality prosthetic limb as well as a motorised wheelchair. The functional disability is, therefore, assessed at 80%.

12. In view of the above, the appellant shall be provided with a motorised wheelchair as well as a prosthetic limb of good quality from any vendor as may be mutually agreed with by the appellant and the insurer. Presently the appellant has identified a vendor by the name of M/s P & O International Pvt. Ltd. The type of fitment should be to the comfort and satisfaction of the injured/appellant. The payment for the same shall be made directly by the insurer to the vendor, on the production of an advance invoice to it. Furthermore, the insurer shall ensure that the prosthetic limb now supplied or subsequently whenever changed, shall have a lifetime warranty. Similarly the motorised wheelchair too shall have a lifetime warranty. The provision of the prosthetic limb and the wheelchair shall be ensured by the insurer within two weeks from the date of receipt of copy of this order.
13. In view of the above, the amount of Rs. 2,00,000/- awarded towards the provision and maintenance of prosthetic will not be required to be paid by the insurance company, instead the prosthetic itself will be provided with a lifetime warranty, as directed hereinabove.
14. Since the appellant had to undergo two operations and suffered an incurable and irretrievable foot for almost six to eight months, obviously the compensation towards pain and suffering needs to be enhanced. Accordingly it is enhanced from Rs. 2,00,000/- to Rs. 3,00,000/-. Enhancement of compensation towards loss of amenities is also sought. In the present case, the appellant was 47 years of age

when the accident happened. He was in the prime of his life, his duties as a family man would be severely restricted in terms of him being the provider, protector and leader of his family. In many ways, he may now be considered by his family as a “dependent” upon them; also his movement with his family on outings, social gatherings and other events would be severely constrained and adversely affected. He would not be able to drive any motor vehicle due to his permanent disability and injuries. These deprivations are only illustrative. In the circumstances, the ‘loss of amenities’ needs to be and is enhanced from Rs. 1,00,000/- to Rs. 2,50,000/-.

15. Hence, the amount payable by the insurer to the claimant is as under:

S.No.	Particulars	Amount
1.	Loss of dependency (Rs. 11,698 (income) x 12 (months) x 13 (multiplier) x 80/100 (functional disability) x 125/100 (loss of future prospects)	Rs. 18,24,888
2.	Pain and Suffering	Rs. 3,00,000/-
3.	Loss of amenities	Rs. 2,50,000/-
TOTAL		Rs. 23,74,888/-

16. Let the enhanced amount of Rs. 4,87,958/- be deposited before the learned Tribunal within three weeks of receipt of copy of this order to be released to the beneficiary of the Award in terms of the scheme of disbursement specified therein. The same shall be carrying the interest @ 9% from the date of filing of the DAR i.e. 31.07.2014 till its realisation.
17. The appeal is disposed-off in the above terms.

18. Let a copy of this order be given *dasti* to learned counsel for both the parties under the signature of the Court Master.

NAJMI WAZIRI, J

SEPTEMBER 25, 2019

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