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

CNR No. DLHC010404022019

+ **FAO 404/2019**

CHOB SINGH

.....Appellant

Through: Mr. R.K. Nain and Mr. Daksh Nain,
Mr. Chandan Prajapati, Advocates

versus

M/S THE NEW INDIA ASSURANCE CO LTD & ANR

.....Respondent

Through: Mr. R.K. Tripathi, Advocate for
respondent no. 1

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

ORDER

21.08.2026

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1. The present appeal has been preferred by the appellant/claimant against the order dated 30.07.2019 passed by the learned Commissioner, Employee's Compensation, District North-West, Delhi in Case No. ECI/241/NW/17. Vide the impugned order, the appellant's loss of earning capacity was assessed at 32%, which the appellant seeks to assail.
2. Notably, the claim was filed under Section 22 of the Employee's Compensation Act, 1923 (hereinafter as "the Act") in respect of injuries suffered by the appellant in an accident arising out of and during the course of his employment.
3. The appellant was employed as a driver on vehicle bearing registration No. HR-55U-7689, owned by respondent No.2. On 18.06.2017, at about 02:00 A.M., while the appellant was driving the said vehicle and proceeding towards *Singhu Border* after unloading the



vehicle at *Dwarka*, the vehicle met with an accident near *Vidhya Vihar Apartment, Mangolpuri*. The appellant sustained injuries to his right leg and was taken to *Dr. Baba Saheb Ambedkar Hospital, Rohini*, where he remained admitted for about ten days. An FIR bearing No. 0874/2017 was also registered at P.S. Mangol Puri on 19.06.2017.

4. The appellant claimed that, as a consequence of the injuries suffered in the accident, his right leg became dysfunctional and he was rendered incapable of performing the work of a driver. He accordingly claimed 100% loss of earning capacity. The appellant stated that he was earning Rs.10,000/- per month besides food allowance of Rs.200/- per day.

5. The vehicle in question was insured with respondent No.1/M/s. The New India Assurance Company Ltd. for the period from 31.08.2016 to 30.08.2017. The record further reflects that an additional premium under the Act had been charged by the Insurance Company.

6. Before the learned Commissioner, respondent No.1/owner admitted that the appellant was employed as a driver on the vehicle and that the accident had occurred while he was on duty. However, he subsequently disputed the employer-employee relationship and attributed the accident to the negligence of the appellant. Respondent No.2/Insurance Company admitted the existence of the insurance policy but disputed the employer-employee relationship and its liability towards the appellant, including the liability towards interest and penalty.



7. The learned Commissioner, after considering the pleadings and evidence, held that an employer-employee relationship existed between the appellant and respondent No.1 and that the injury had been sustained by the appellant arising out of and in the course of his employment. The appellant had relied upon, *inter alia*, the FIR, disability certificate, MLC, discharge summary, medical documents, insurance policy, registration certificate and driving licence.

8. The Disability Board assessed the permanent disability of the appellant at 32% in relation to his right lower limb. The learned Commissioner took the age of the appellant as 34 years, on the basis of his driving licence, and for the purpose of computation took his monthly wages at Rs.8,000/-. Applying the relevant factor of 199.40 and taking 32% loss of earning capacity, compensation of Rs.3,06,784/- was awarded to the appellant. Interest @ 12% per annum was also awarded w.e.f. 18.07.2017 till realization.

9. Learned counsel for the appellant submits that the learned Commissioner erred in assessing the loss of earning capacity at 32% merely on the basis of the physical disability certified by the Medical Board. It is submitted that the appellant was working as a driver and, owing to the injury to his right leg, he is no longer capable of performing the work of driving. It is, therefore, contended that the loss of earning capacity ought to have been assessed at 100%. The appellant also submits that the vehicle was duly insured with respondent No.1 and an additional premium under the Act had been charged under the policy.



10. The distinction between physical disability and loss of earning capacity is well settled. The extent of physical disability certified by a Medical Board is not, by itself, determinative of the loss of earning capacity. What is required to be considered is the effect of the injury on the work which the workman was performing at the time of the accident.

11. In Pratap Narain Singh Deo v. Srinivas Sabata & Anr.¹, the Supreme Court considered the case of a carpenter who had suffered amputation of his left arm and held that, although the injury may not necessarily amount to 100% physical disability in relation to the whole body, it rendered him incapable of performing the work of a carpenter and consequently resulted in complete loss of earning capacity in that employment. The principle was subsequently reiterated by the Supreme Court in K. Janardhan v. United India Insurance Co. Ltd.², where the Court held that a tanker driver who had suffered amputation of his leg had suffered 100% disability and incapacity to earn as a tanker driver.

12. The same principle is applicable to the facts of the present case. The appellant was employed as a driver. The Medical Board assessed his permanent physical disability at 32% in relation to the right lower limb. The material on record, however, shows that the appellant's right leg has become dysfunctional and that he is unable to perform the work of driving. The right leg is an essential limb for operating the accelerator and brake of a motor vehicle. Thus, the percentage of

¹ (1976) 1 SCC 289

² (2008) 8 SCC 518



physical disability cannot be mechanically equated with the percentage of loss of earning capacity in the occupation of the appellant.

13. The aforesaid position also finds support from the decisions of this Court relied upon by the appellant, including National Insurance Co. Ltd. v. Ranjit & Anr.³, and M/s National Insurance Co. Ltd. & Anr. v. Hari Om⁴. In particular, this Court has recognised that even a substantially lower percentage of physical disability affecting the right lower limb of a driver may result in 100% functional disability for the purpose of his occupation as a driver. The record itself refers to a decision of Reliance General Insurance Co. Ltd. vs. Bikramjit Singh & Anr.⁵, where 31% physical disability in the right lower limb of a driver was treated as 100% functional disability, considering the importance of the right leg for acceleration and braking.

14. In the present case, therefore, the learned Commissioner ought to have assessed the loss of earning capacity with reference to the appellant's actual occupation and the functional effect of the injury suffered by him. Since the injury to his right leg has rendered him incapable of continuing his work as a driver, the loss of earning capacity for the purpose of the present claim is required to be taken at 100%.

15. As regards the liability of respondent No.1/Insurance Company, the vehicle bearing registration No. HR-55U-7689 was insured with respondent No.1 for the period covering the date of accident. The record further shows that an additional premium under the Act was

³ FAO No.246/2007

⁴ FAO No.264/2010



charged by the Insurance Company from respondent No.2. In these circumstances, respondent No.1 cannot avoid its liability to indemnify the insured in respect of the compensation payable under the Act.

16. Accordingly, the appeal is allowed. The impugned order dated 30.07.2019 is modified to the extent that the appellant's loss of earning capacity shall be assessed at 100% instead of 32%.

17. The matter is accordingly remanded to the learned Commissioner for re-computation of the compensation payable to the appellant on the basis of 100% loss of earning capacity, in accordance with law. The learned Commissioner shall also take into consideration the amount, if any, already deposited/paid pursuant to the impugned Award and pass the consequential order. For this purpose, list before the learned Commissioner on 14.09.2026.

18. A copy of this order be communicated to the concerned Commissioner.

19. The appeal stands disposed of in the above terms.

MANOJ KUMAR OHRI, J

AUGUST 21, 2026

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⁵ FAO No.24204/2016, decided on 01.05.2018