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

\+ MAC.APP. 189/2016, CM APPL. 7138/2016

NEW INDIA ASSURANCE CO LTD ..... Appellant
Through: Mr. Priyadarsi Acharya, Adv.

versus

RINKU @ VIRENDER KUMAR & ORS ..... Respondents
Through: Mr. R.K. Bachchan, Adv. for R-1.

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI

<u>O R D E R</u>

% 18.04.2017

The appellant/insurance company has impugned the award dated 12.01.2016 passed by Judge, MACT, KKD Courts in MACT No. 31 of 2013 on the ground that: (i) though respondent No.1 has suffered an injury resulting in 47% disability of his left lower limb, nevertheless this disability is not of such a nature which would render him so functionally disabled as to result in loss of his future earnings; and (ii) no proof of income of the respondent was furnished, hence the computation of compensation on the basis of minimum wages as well as addition of 50% thereof towards loss of future earnings is erroneous.

The learned counsel for respondent No. 1 submits that the said respondent was earning his livelihood by repairing air conditioners and that he was merely 23 years of age as on the date of the accident; but for his injury his experience in his vocation would have increased over the years and resultantly his expertise would have gotten more valuable; the 47% disability in his left lower limb was of such a nature that he would not be able to lift heavy objects easily or bear additional weight on his body; this seriously affects the functional ability of the respondent whose work necessarily requires lifting heavy objects connected with the servicing and/or repair of air conditioners.

On the aforesaid issue, the impugned award has reasoned as under:

> *"Dr. Radha Raman, Sr. Resident, Orthopedic, GTB Hospital has been examined as PW 3, who proved the permanent disability certificate of Sh. Rinku @ Virender Kumar. As per the certificate Rinku @Virender has suffered 47% permanent disability in relation to his left lower limb. It is further deposed that it is a case of amputation 4th & 5th toe of left foot and the injured can walk but will not be able to run or walk fast. It is further deposed that he will have no problem in lifting weight but he will not be able to walk much alongwith the weight. Injured can climb stairs and would have no difficulty in climbing stairs.*
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> *As per the record available, initially the injured was admitted in GTB hospital and had suffered grievous injuries. Petitioner has stated in his chief affidavit that remained admitted in the GTB Hospital from 21.08.2012 to 07.09.2012. Looking to the nature of injuries, it is felt that he must have taken rest for at least 3 months and thus, he is entitled for loss of income for a period of 3 months.*
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> *As far as income of the petitioner is concerned, it is stated by petitionerin the claim petition that he was doing the mechanic work (AC repairing) and earned a sum of Rs. 15,000/-p.m. However, no proof regarding the income of the petitioner has been filed. Even the original documents regarding the educational qualification of the injured have not been placed on*

record. Ld, counsel for insurance company has argued that minimum wages of unskilled worker be considered in the absence of any documentary prove regarding income of the petitioner. The minimum wages of an unskilled worker on the date of accident were 7020/-. As per the disability certificate dated 11.04.20014 petitioner at the time of examination was aged about 23 years. As per MLC he was 23 years of age on the date of accident. Applying the guidelines of the Hon'ble Supreme Court in the judgment report as ***"Smt. Sarla Verma vs DTC 2009 AIR (SC) 3104",*** *the multiplier applicable in the present case is 18, for the purpose of calculating future loss of income.*

It is difficult to ascertain in exact terms as to how much the disability in left lower limbs has affected the whole body of the petitioner. Counsel for petitioner has argued that an important limb of petitioner is affected, the functional disability be considered 100% where as the counsel for insurance has argued that whole body disability be reduced to half. It is also argued that the petitioner would not be able to apply for any uniformed jobs such as in army or police due to the disability Considering the age and occupation of the petitioner and the fact that disability relates to left lower limb, the whole body disability is assessed at 24%."

The injured respondent No. 1 was engaged in the vocation of repairing air conditioners; he had claimed a higher compensation @ income of Rs.15,000/- per month; the Tribunal took into consideration the minimum wages of an unskilled worker as on the date of accident, i.e. Rs.7020/- per month; the age of the respondent No. 1 being 23 years of age, appropriate multiplier of 18 was applied and his disability was considered at 24% for the whole body instead of 100 per cent as claimed by him.

In view of the above, the Court is of the opinion that the expertise of a mechanic enhances with experience and the petitioner being merely 23 years of age had the prospects of honing and enhancing his skills with experience over time. While his disability in relation to the whole body was reduced to 24%, there would be corollary loss in his earnings. This has been duly factored in. In the circumstances, the computation of amount arrived at in the impugned order cannot be faulted. Hence the compensation of Rs.6,60,387/- to an air conditioner repair mechanic, who has suffered 47% disability in his left lower limb, is just. The Court finds no reason to interfere with the same. The appeal is without merits and is accordingly dismissed. The statutory amount shall be returned to the appellant.

With respect to the award amount, since 30% has already been released, it is directed that 50% of the remaining amount shall be kept in an interest bearing Fixed Deposit in the name of respondent No. 1 and interest on the same shall be credited to his account on half yearly basis and the remaining 50% amount shall be released to the respondent No. 1 in three weeks into the bank account of the respondent No. 1 maintained with UCO Bank.

Should the respondent require more monies for any exigency, he may move an appropriate application.

NAJMI WAZIRI, J

APRIL 18, 2017/acm