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

% Judgment delivered on: 30.05.2017

+ **MAC.APP. 898/2015 & CM No.27975/2015**

RELIANCE GEN INS CO LTD. Appellant

Through: Mrs. Shantha Devi Raman and
Mr.Arihant Jain, Advocates.

Versus

NEELAM & ORS.Respondents

Through: None.

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J (Oral)

1. The appeal impugns the award of 50% for loss of future prospects on the income of the injured/respondent No.1 by the Tribunal.
2. In a motor accident on 10.11.2013, the respondent No.1 was injured and rendered permanently impaired apropos her right lower limb upto 60% while similar assessment in relation to the left lower limb could not be completed as there was a possibility of its improvement after further treatment. In this regard, the Tribunal has recorded as under:-

“8. Dr. Abhishek Kashyap, Asst. Professor, Orthopedics, Safdarjung Hospital was produced in the witness box as PW2 and he deposed that he was a member of the Disability Board which had examined the patient Neelam and issued the disability certificate Ex.PW2/1. As per the same, the petitioner had permanent physical impairment in respect- to right lower

limb of sixty percent and the permanent physical impairment in relation to left lower limb could not be assessed as there was possibility of improvement following further treatment, He further stated that it was not possible to state how much time would be taken in union of both bones (tibia left) and only the treating doctor could tell the same. He stated that the petitioner could have prosthesis on the right leg which would improve her mobility. Whether the petitioner would continue to require crutches or not would depend on the condition of the left leg. He further stated that the petitioner could do a sitting job but if she had to use a sewing machine which required use of feet she would not be able to do the said work. He was not cross-examined.

9. Shri Kaushal Kishore, Prosthetist and Orthotist from P&O International Inc. Vimhans Artificial Limbs Centre Vimhans Hospital appeared in the witness box as PW3 and he deposed that his office had issued the quotation Ex.PW1/12. He stated that if the petitioner got the below knee prosthesis she if (sic) would be able to do her routine activities. The warranty was of two years but the life of the equipment could be five to six years. PE was closed on 19.5.2015. RE was closed on 30.7.2015.”

3. The appellant argues that although the functional disability in relation to the whole body was taken at 40%, 50% was awarded towards loss of future prospects; this is an error because the injured would be able to move about and otherwise continue her vocation as a ‘tailor’. Therefore, the addition of 50% apropos loss of future prospects is excessive especially since the injured would be able to work on sewing machines which do not require the use of the lower limbs.

4. The Court is unable to accept the argument because it is specious. In assessing functional disability because of permanent physical or psychological impairment, the Court has to see the degree to which the

functionality in the person's vocation is or will be affected. The right lower limb was 60% permanently disabled i.e. requiring the fitment of a prosthetic. The orthopaedic doctor/ professor deposing on behalf of the Medical Board had stated that the aid of a prosthetic leg may improve her mobility, but he was categorical that she would be unable to use a sewing machine requiring the use of her feet. His expert opinion was not assailed. Then there is the pending assessment of her left lower limb which could add to her woes and entail a re-assessment for additional disability. In ***Rekha Jain vs National Insurance Co. Ltd. (2013) 8 SCC 389*** the Supreme Court held that:

*“..... In this regard, it is relevant to refer to the judgment of this Court in the case of **National Insurance Company Ltd. V. Mubasir Ahmed 2007 (2) SCC 349**. This Court has held that loss of earning capacity is not a substitute for percentage of physical disablement. It is simply one of the factors taken into account to award just and reasonable compensation. Even though the claimant does not suffer from 100% physical permanent disability, he suffers from 100% functional disability if he loses the capacity to pursue his work as a result of the accident. It is worthwhile to extract paragraph no. 8 from the aforesaid judgment which reads as under:*

“8. Loss of earning capacity is, therefore, not a substitute for percentage of the physical disablement. It is one of the factors taken into account. In the instant case the doctor who examined the claimant also noted about the functional disablement. In other words, the doctor had taken note of the relevant factors relating to loss of earning capacity. Without indicating any reason or basis the High Court held that there

was 100% loss of earning capacity.”

39. In **Palraj v. North East Karnataka Road Transport Corpn.** 2010 (10) SCC 347, where the appellant was a driver, this Court held that although the appellant has lost the use of his legs, the same amounts to total disablement as far as driving a vehicle is concerned.

40. In **Nizam’s Institute of Medical Sciences v. Prasanath S. Dhananka** 2009 (6) SCC 1, this Court has observed as under:

“88. We must emphasise that the court has to strike a balance between the inflated and unreasonable demands of a victim and the equally untenable claim of the opposite party saying that nothing is payable. Sympathy for the victim does not, and should not, come in the way of making a correct assessment, but if a case is made out, the court must not be chary of awarding adequate compensation. The “adequate compensation” that we speak of, must to some extent, be a rule of thumb measure, and as a balance has to be struck, it would be difficult to satisfy all the parties concerned.

.....

90. At the same time we often find that a person injured in an accident leaves his family in greater distress vis-à-vis a family in a case of death. In the latter case, the initial shock gives way to a feeling of resignation and acceptance, and in time, compels the family to move on. The case of an injured and disabled person is, however, more pitiable and the feeling of hurt, helplessness,

despair and often destitution enures every day. The support that is needed by a severely handicapped person comes at an enormous price, physical, financial and emotional, not only on the victim but even more so on his family and attendants and the stress saps their energy and destroys their equanimity.

(emphasis supplied)

91. We can also visualise the anxiety of the complainant and his parents for the future after the latter, as must all of us, inevitably fade away. We, have, therefore computed the compensation keeping in mind that his brilliant career has been cut short and there is, as of now, no possibility of improvement in his condition, the compensation will ensure a steady and reasonable income to him for a time when he is unable to earn for himself.”

41. In this regard, in **Baker’s** case supra, it has been stated by Lord Reid that a man is not compensated for the physical injury; he is compensated for the loss which he suffers as a result of that injury. Therefore, the functional disability is a forceful alteration of career option of the appellant who has already undergone physical and mental injuries because of the accident. It would amount to adding distress to injury if one is forced to work with difficulty to earn his/her livelihood so as to reduce the burden of the wrongdoer in terms of compensation.

5. In the circumstances, when the injured is unable to continue her vocation as before or use a sewing machine involving the use of her feet, the grant of 50% towards loss of future prospects is evidently on the conservative side. It is not excessive. In view of the preceding discussion

the Court finds no reason to interfere with the impugned order at the appellant's behest, its contentions are rejected.

6. The appeal is without merit, hence alongwith pending application, it is dismissed.

7. The statutory deposit be refunded to the appellant.

NAJMI WAZIRI, J.

MAY 30, 2017

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