

\$~33

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

%

Decided on: 19.07.2019

+

MAC.APP. 681/2019 & CM Nos. 31958-60/2019

SHRI RAM GEN INS CO LTD.

..... Appellant

Through: Mohammed Mustafa, Advocate.

Versus

ARVIND KUMAR & ORS.

..... Respondents

Through:

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Oral)

1. This appeal impugns the judgment dated 06.04.2019 passed by the learned Tribunal in MACT No.392/2018 on the ground that ITR of only one year was taken into consideration for computation of loss of income. It is not in dispute that the ITR was filed much prior to the accident. Admittedly, no questions were asked by the appellant doubting the veracity of the ITR or that it was manipulated. Logically, the ITR could not have been manipulated because it was filed much prior to the accident.

2. The learned counsel for the appellant states that the injured was a businessman, therefore, he should have filed ITRs of many previous years. The said argument is untenable because even one year's ITR, filed prior to

the accident, would be sufficient to establish the earnings and/or income of the person concerned. Accordingly, the said argument is rejected.

3. As regards the award of compensation for loss of future income, the Court finds no anomaly in the same, because the earnings of the injured, who is a businessman, would not stagnate at the amount which he was earning at the time of the injury. Human endeavour is always filled with hope of bettering one's economic and social position. In the case of a permanently disabled person, especially where the right upper limb of a right-handed person has been amputated, there would be significant debilitation in his normal activities. Therefore, 35% functional disability with regard to the whole body cannot be faulted with. Additionally, the person would be entitled to 25% addition towards loss of future prospects. The Court would refer with benefit, to the dicta of the Supreme Court in ***Parminder Singh vs. New India Assurance Company, Civil Appeal No. 5123/2019***, dated 1st July, 2019, wherein the Supreme Court has upheld the award of 50% by the High Court towards loss of future prospects because i) the person had suffered 100% functional disability which would deprive him from getting married and leading a normal family life; ii) capacity to earn a living had been completely shattered for the rest of his life and iii) he had become a fully dependant person. It held:-

“5.3. Taking the income of the Appellant as Rs. 10,000/p. m., with Future Prospects @50% as awarded by the High Court, the total income of the Appellant would come to Rs. 15,000/p. m.

xxxx

xxxx

xxxx

5.9. Given the debilitated state of the Appellant, no amount of money can compensate him. He has been in this condition since the age of 22 years when the accident took place, and will remain like this throughout his life. The Appellant has also been deprived of having a normal married life with a family, and would require medical assistance from time to time. Being completely dependant, he would require the help of an attendant throughout his life. In view of these uncontroverted facts, we deem it fit and appropriate to award a lump sum amount of Rs. 10,00,000/to the Appellant towards medical expenses and attendant charges.”

What emanates from the above is that even in a case of permanent disability, compensation can be awarded for loss of future prospects.

6. In view of the above, no case is made out to interfere with the impugned order. The appeal is without merits and is accordingly dismissed. The pending application also stands dismissed.

7. No return of the statutory amount.

NAJMI WAZIRI, J.

JULY 19, 2019

sb