

\$~27

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

%

Decided on: 25.11.2019

+ MAC.APP. 898/2019, CM APPL. 50690/2019 & CM APPL.
50691/2019

UTTAR PRADESH STATE ROAD TRANSPORT CORPORATION
(UPSRTC) Appellant

Through: Mr. Aly Mirza, Advocate.

versus

RAMESH & ANR

..... Respondents

Through:

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Oral)

1. This appeal impugns the award of compensation dated 19.09.2019 passed by the learned MACT in Petition No.77492/2016 on the ground that 43% permanent physical disability of the injured, apropos left upper limb and left lower limb, has been assessed as 30% functional disability. According to the appellant, it is on the higher side.

2. The nature of injury suffered by the victim was “fracture proximal tibia”, he was treated for "fracture (Lt) radius, fracture (LtO tibia, testicular rupture with scrotal haematoma (Rt) situ". He underwent ORIF fracture Radius and fracture tibia and Orchidectomy (Rt) situ and he was on bed-rest for a long period of time.

3. What appears from the above and from the nature of injuries, is that his limbs on the left side of the body had been rendered unusable by nearly half their natural capacity. Bearing in mind, that he has also suffered severe injury in his scrotal region, the combined effect of all the injuries would have an affect, not only his running the general store but he would also not be able to pick up any object of reckonable weight. Resultantly, there would be delay in dealing with customers or packing goods for them. His work would obviously be affected to quite an extent. However, his claim for compensation @Rs. 10,000/- per month, was declined because he was unable to prove the same. Therefore, the minimum wages for an unskilled worker were taken into consideration.

4. Now, if the claimant is considered as an unskilled worker, his ability to offer his services as a labourer would be seriously impaired. The 43% permanent physical disability apropos left upper limb and left lower limb as well as severe injury in his scrotal region would surely affect his services to a greater degree as a daily wager. He would be the least likely candidate to be hired for his physical labour in an open labour market for daily wagers. In the circumstances, the assessment of his functional disability at 30% calls for no reduction. The Court finds no reason to interfere with the impugned order on this ground.

5. The appellant next contends that the claimant has been awarded Rs. 1,50,000/- twice over for the same injury i.e. i) for disability and ii) for injury in the groin region.

6. In para 29 and 30 of the impugned order, the award of Rs. 1,50,000/-, each for 'pain, suffering and trauma' and for 'loss of disfigurement', has been granted because of the petitioner sustaining testicular rupture with

scrotal haematoma (Rt) situ, he would be unable to conceive another child as the semen analysis revealed azoospermia, therefore, pregnancy was unlikely by natural conception and ART may be required. Apropos this issue, this Court in ***Oriental Insurance Company Ltd. vs. Manoj Kumar & Ors.*** in MAC. APP. 423/2017 decided on 13.09.2019 held as under:

“6. It is the claimant’s case that he has suffered 82% permanent physical disability apropos his whole body and he should be awarded just compensation, especially towards ‘loss of future prospects’. The learned counsel for the claimant, contends that the nature of the injury too has to be kept in mind for awarding compensation for loss of amenities, enjoyment of life, etc. The claimant was 32 years of age, at the time of the motor vehicular accident. He was married, but the nature of the injury caused by the accident, has deprived him of the enjoyment of comprehensive marital life. PW-3, Dr. Arun Gupta of GTB Hospital had described the nature of the injuries as under:

“E. Because the Ld. Tribunal has also not awarded any amount towards loss of future medical expenses. It is clarified here that the claimant examined Dr. Arun Gupta Director of surgery GTB Hospital Delhi as PW-3 he stated that "patient suffered serious head injury and distil (sic) part (i.e. front part) of the penis was remove by surgical operation and subsequent developed infection and gangrene" thus after taking consideration of grievous injuries and long treatment the claimant is entitled an amount of Rs. 50,000/- towards future medical treatment.”

7. In effect, not only would the claimant be deprived of a marital life but his injury in the groin area would be extended injustice to his spouse. The injury would also be a restraint upon procreation. ...”

7. It is the appellant's contention that since he already had two children and did not express any desire or intention of having another child, the injury is not likely to affect his life. This argument is merely stated to be rejected. The desire of parents to enhance the size of their family by natural conception is their personal choice, which may alter from time to time. Surely, the insurance company can have no say in this regard. The ability of the injured to conceive naturally has been irretrievably impaired. He has been compensated for the personal setback. It calls for no interference.

8. The second amount of Rs. 1,50,000/- was for the disfigurement of his body part i.e. testicular fracture. The compensation had been granted under two different non-pecuniary heads. They are not a duplication. Hence, there is no reason to interfere with the impugned order. The appeal is without merit and is accordingly dismissed.

9. The statutory amount, alongwith interest accrued thereon, be deposited into the 'AASRA' Fund created by this Court.

NOVEMBER 25, 2019

AB

NAJMI WAZIRI, J