

\$~R-7 & 8

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

% *Decided on: 20.11.2019*

+ MAC.APP. 364/2016
ORIENTAL INSURANCE COMPANY LTD. Appellant
versus

RAJ SINGH AND ORS. Respondents

+ MAC.APP. 649/2016
RAJ SINGH Appellant
versus

JITENDER SINGH & ORS. (ORIENTAL INSURANCE
COMPANY LTD.) Respondents

Through: Mr. Ravi Sabharwal, Advocate for
Insurance Company.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J (Oral)

MAC.APP. 364/2016

1. This appeal impugns the award of compensation dated 28.01.2016 passed by the learned MACT in Suit No. 4/16, on two grounds: i) that 90% disability apropos his left lower limb has been taken as equivalent functional disability for the whole body and ii) that the injured/claimant had undergone operation at LBS hospital from 06.02.2012 till 23.02.2012. His discharge summary shows that he suffered compound grade fracture of both bones of left leg, with muscle damage of right foot besides multiple abrasion injuries. On 08.02.2012 he was operated upon for wound debridement and K-wire fixation of distal femur and tibia. He was also referred to Plastic Surgery

Department for further treatment of the wound in the left leg. He remained under treatment due to gangrene of skin that developed over his entire left leg, below the knee. The Disability Certificate was proven by PW-2-Dr. Arun Jain, Senior Resident (Ortho), GTB Hospital that the claimant suffered 90% permanent disability in his left lower limb.

2. The learned Tribunal has examined the disability of the injured as under:-

“ 29....It is stated by Ld. Counsel that the Petitioner was TSR Driver by profession and the permanent disability has rendered him totally incapacitated. It is stated that the Petitioner could not even sit, squat or walk properly. The Tribunal also personally examined the petitioner who had come to the court with support and his condition shows that he is barely able to stand erect. He is unable to do any work. He is facing difficulties in his routine mundane work. The Tribunal cannot overlook the fact that Petitioner does not come from an affluent background. Due to the disabilities sustained, his capacity has been considerably reduced, restricting him from carrying out his profession in future besides doing any other work. He has 90% of Permanent Locomotor Impairment. As PW-2 Dr. Anuj Jain stated that in such a case, Petitioner was unable to do even his normal activities including knee bending or sitting crossed leg etc. His left leg was completely deformed with his condition non progressive in future. It is important to consider the relevant fact that the Petitioner was a TSR driver and driving the TSR was the only means of livelihood for himself as well as for his family members. Considering, the evidence on record and keeping in view the facts and circumstances, the functional disability of Petitioner is taken as 90% in relation

to his whole body, in view of dictum of "Raj Kumar Vs. Ajay Kumar & Anr., (2011) 1 SCC 343" as the Petitioner shall never be able to work as a driver again."

3. What is to be seen from the above is that the injured would no longer be able to carry on his duties as a TSR driver. He would therefore be rendered disabled apropos his vocation because of the degree of debilitation which the learned Tribunal has examined i.e. he would not be able to stand erect without any aid or assistance. In the circumstances because of the peculiar nature and extent of his debilitation, the assessment of functional disability to 90% apropos whole body cannot be faulted with.
4. The appellant's next argument is that the rate of interest awarded @12% is on the higher side. The said argument is valid. The Court would note that for the past half a decade interest has been awarded @9%. Accordingly, the impugned order is modified to the extent that the rate of interest on the awarded amount shall be payable @9% p.a. from the date of Claim Petition till its realization.
5. The appeal is disposed-off in the above terms.
6. Since the appellant has partially succeeded in its appeal, the statutory amount, alongwith interest accrued thereon, be returned to the appellant.

MAC.APP. 649/2016

7. This appeal seeks enhancement of the compensation awarded on the ground that permanent functional disability should be assessed @100% because the TSR driver for all practical purposes was rendered 100% disabled to carry out his only vocation i.e. driving a TSR. He has suffered

from 90% Permanent Locomotor Impairment. Furthermore, the appellant claims for compensation towards 'future prospects'. The claimant was 37 years of age at the time of the accident, therefore, 40% towards 'future prospects' ought to be and is hereby granted. The appellant was the scooter driver at the time of unfortunate accident and he possessed a valid driving licence. Therefore, he clearly was certified to be a skilled TSR driver. Albeit, since he was not able to prove his income, minimum wages applicable to a skilled workman was taken into consideration i.e. Rs. 8,112/- per month. The mere fact that he was a skilled workman with a valid licence to driver a TSR would also indicate that he was earning some monies by plying a TSR as contended by the claimants. This is part of the unorganized sector, wherein the earnings cannot be conclusively proven by the claimants. A fair assessment of their loss of dependency is required to be made. A TSR driver would surely earn more than the minimum wages of a skilled workman. Therefore, adoption of minimum wages would not be just in the facts of the present case. Accordingly, the earnings are assessed @ Rs. 13,000/- per month. The amount payable shall be as under:-

Rs. 13,000/-(monthly income) x 12(months) x 140/100(future prospects) x 15(multiplier) x 90/100(disability)= Rs. 29,48,400/-

8. Let the enhanced amount, alongwith interest accrued thereon, be deposited before the learned Tribunal, within three weeks from the date of receipt of copy of this order, to be released to the beneficiaries of the Award, in terms of the scheme of disbursement specified therein.

9. The appeal stands disposed-off in the above terms.

NAJMI WAZIRI, J

NOVEMBER 20, 2019/RW

