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

% *Decided on: 02.09.2019*

\+ MAC.APP. 477/2018

SUDESH KUMAR @ CHHOTU ..... Appellant

Through: Ms. Sarika Goel, Advocate.

versus

OM PRAKASH RAI & ORS (IFFCO TOKIO GENERAL INSURANCE CO LTD) ..... Respondents

Through: Mr. B.R. Sharma, Advocate for R-2.
Mr. Varun Sarin, Advocate for R-3.

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Oral)

1. This appeal seeks enhancement of the compensation granted by learned MACT vide order dated 10.10.2017 in MACT No. 4175/16, on the ground that although the appellant has suffered 98% permanent physical impairment (PPI) apropos both his lower limbs i.e. below knee amputation his functional disability was assessed at merely 49%. The impugned order has reasoned on the issue, as under:

> *"24. Loss of future income: As per Aadhar Card Ex. PW-1/3, date of birth of petitioner is 01.11.1995. Therefore, he was around 21 years at the time of accident i.e. 03.03.2016. Petitioner has suffered 98% permanent physical impairment (B/L B/K amputation). Due to the present injuries his entire career is ruined. It is natural that with this disability and injuries the*

petitioner entire future career/earning capacity has been destroyed. Present injury will somehow diminish his earning capacity. As per disability certificate, petitioner suffered 98% disability in respect of his both lower limbs. In view of the judgment of Delhi High Court titled as -Laxmi Narain Vs. Trilochan Singh & Ors., FAO No. 289/99, dated 04.05.2009, Delhi", the total functional disability towards whole body is assessed around 49%."

2. While the PPI apropos both his lower limbs is 98%, his functional disability as a helper on a truck or any other employment as a helper or as a labourer would be 100%. The claimant's only vocation required involvement of his limbs in physical labour. With his inability to move about due to the almost non-existence of his legs his vocation would remain a chimera. Therefore, his functional disability would be treated as 100%.

3. The appellant was 21 years of age at the time of the accident, in terms of the dicta of the Supreme Court in ***National Insurance Co. Ltd. v. Pranay Sethi & Ors*** (2017) 16 SCC 680, he would be entitled to compensation @40% towards "loss of future prospects".

4. Compensation towards "pain and suffering" has been fixed at Rs. 35,000/. The compensation is as under:

1.	*Compensation for medical expenses*	*Rs.20,000/-*
2.	*Compensation for pain & suffering*	*Rs.35,000/-*
3.	*Compensation for special diet, conveyance and attendant charges*	*Rs.30,000/-*
4.	*Loss of future earning capacity /future income*	*Rs.7,21,300/-*

5.	*Compensation for loss of amenities and enjoyment of life*	*Rs.50,000/-*
6.	*Compensation for disfigurement*	*Rs.1,00,000/-*
7.	*Loss of income during treatment*	*Rs.40,890/-*
8.	*Artificial limb*	*Rs.6,00,000/-*
	TOTAL	*Rs.15,97,190/-*

5. It is argued that the compensation under serial nos. 2,3,5 & 6 is on the lower side in terms of ***Pranay Sethi*** (supra). The Court concurs with the submission of the learned counsel for the appellant. The appellant stated that he is unable to move about, except with immense difficulty and only with the assistance of a helper. This disfigurement would not only result in loss of amenities and enjoyment of life till his last breath, but would also affect his family life as well as his interaction with his family members and friends; the same would be a case for pain and suffering throughout his life. In the circumstance, the consolidated compensation amount of Rs. 2,15,000/-, under serial nos. 2,3,5 & 6 is enhanced by Rs. 5 lacs i.e. to Rs. 7,15,000/-.

6. The claimant had claimed to be employed and working in Delhi; the employer's residence and business is in Delhi; the accident happened in Delhi, it was the claimant's case that he was also residing in Delhi. In the circumstance, the minimum wages applicable to an unskilled worker in Delhi shall be made applicable. Accordingly, the amount payable to him would be Rs. 9,178x12x18x140/100=Rs. 27,75,427/- + Rs. 5,00,000/-.

7. Insofar as the claimant has been admitted by the employer to be working and employed with him. The claimant whose permanent residence was in Fatehpur central Uttar Pradesh, could not have been coming to Delhi every day for his employment. He must have had a residence at some place in Delhi. Ordinarily people in the unorganized sector do not have a proof of residence.

8. Since the claimant is a 21 year old bachelor, his marriage prospects would be affected due to the permanent physical impairment. In this regard, a compensation of Rs. 2,00,000/- is granted towards his loss of marriage prospects.

9. The total enhanced amount payable by the insurance company shall be:

S. No.	Particulars	Amount
1.	Loss of earning capacity and loss of future prospects (Rs. 9,178/- (minimum wage) x 12 (months) x 18 (multiplier)= 19,82,448/- x 140/100= 27, 75,427/-	Rs. 27,75,427/-
2.	Compensation for pain and suffering, special diet, conveyance and attendant charges, loss of amenities and enjoyment of life, disfigurement: Consolidated earning	Rs. 7,15,000/-
3.	Loss of marriage prospects	Rs. 2,00,000/-
4.	Medical Expenses	Rs. 20,000/-

5.	Loss of income during treatment	Rs. 40,890/-
	Total	**37,51,317/-**

10. The enhanced amount shall be deposited within three weeks of receipt of copy of this order, to be disbursed to the beneficiaries of the Award in terms of the scheme of disbursement specified therein. The enhanced amount too shall carry interest at the same rate from the date as mentioned in the Award.

11. The amount of Rs. 6,00,000/- awarded towards fitment of artificial limb shall be utilized by the insurance company to provide the appellant a standard quality prosthetic limb, with a lifetime warranty. However, even after fitment of the prosthetic limbs for both his amputated legs, he would not be able to cover long distances, therefore, to optimise his movement it would be appropriate, indeed necessary, to provide him with a motorised wheelchair. It is so awarded. The same shall be made available to him by the respondent- insurance company. It shall be of good quality. Since the appellant will now be wheelchair bound for the rest of his life, the wheelchair shall have a lifetime warranty. The insurance company shall also provide the claimant with two e-mail addresses of their office and phone numbers of two responsible officers, who will assist the claimant, should difficulties arise apropos the motorized wheelchair or the prosthetic limbs.

12. The appeal is disposed-off in the above terms.

NAJMI WAZIRI, J

SEPTEMBER 02, 2019

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