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

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Decided on: 27.11.2019

+ **MAC.APP. 15/2014**

JAIVEER

..... Appellant

Through: Mr. Shrey Chathly, Adv.

versus

RAJENDRA KUMAR & ORS

..... Respondents

Through: Ms. Archana Gaur, Adv. for NIC.

Mr. Pradeep Kumar Arya, Adv. with

Miss Sanya Arora, Mr. Ashwyn Kalra and

Mr. Gaurav Chaudhry, Advs. For R-1&2.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Oral)

1. This appeal impugns the award of compensation dated 18.03.2013 passed by the learned MACT in MACT Petition No. 167/2009 on the ground that the appellant/claimant being a tailor by profession, minimum wages applicable to a skilled workman ought to have been applied, while computing the compensation towards "loss of future earnings".

2. However, it is a matter of record that there was no evidence to prove the vocation of the claimant that he was earning his living as a tailor. The place where he was rendering the said services is not mentioned and the period of employment or engagement in such vocation is also not mentioned. The Court would note that no evidence whatsoever has been brought on record to even indicate that the claimant did carry out any

tailoring work. In the circumstance, for the learned Tribunal to have concluded that he was not a tailor cannot be faulted with. The minimum wages applicable to an unskilled workman was rightly taken into consideration and calls for no interference.

3. The appellant seeks enhancement of the compensation on the ground that the same is on the lesser side. The learned Tribunal considered his functional disability as 40% against the 76% permanent disability apropos both his lower limbs. In this regard, the learned Tribunal held as under:

“14. The petitioner has claimed to have suffered permanent disability He has examined Dr. Jaiwardhan Singh, Senior Resident from GTB Hospital who has proved the permanent disability certificate dt 04.04.2011 issued from GTB Hospital as Ex. PW2/1 and identified his signatures on the same at point A. According to the certificate, the petitioner is assessed to be suffering from 76% permanent locomotor impairment of both lower limbs which was not likely to improve and reassessment was not recommended. PW-2 was cross examined by counsel for respondent no. 3. He has denied the suggestion that the hospital has given a fake certificate on the asking of the petitioner.

15. The Hon'ble Supreme Court in the case of Raj Kumar Vs. Ajay Kumar reported in (2011) 1 SCC 343 was pleased to hold that that Tribunals ought to assess the permanent disability of the victim in relation to the functional disability suffered in relation to the whole body and not go by the percentage of disability assessed with respect to a particular part of the body. When tested on the principles enunciated by the Hon'ble Supreme Court in the case of Raj Kumar Vs. Ajay Kumar (Supra) it

is seen that the disability suffered by the petitioner is 40% since both his lower limbs are non functional.”

4. An unskilled workman has only his/her physical labour to offer in the labour market. The fit one in comparison to next candidate will be employed. One whose movement is curtailed or who is perceived to be handicapped, will automatically be glossed over from being employed. What is to be seen from the above is that the appellant has suffered 76% permanent disability in both lower limbs. He would ordinarily not be preferred for physical labour or other labour intensive activities and he would also be unable to undertake any kind of regular work. Therefore, the level of his employability would be vastly reduced. In an identical context, this Court in MAC.APP. 637/2018, titled as ***U P State Road Transport Corporation Vs. Ram Abhilakh & Anr.*** dated 06.11.2019, held as under:

“1.on the ground that the assessment of 20% functional disability of the injured, is erroneous. The aforesaid argument is untenable because the injured had suffered 35% disability in relation to the left lower limb and right upper limb. The learned Tribunal was of the view that the degree of disability in both the limbs would certainly affect the career of the injured and discharge of regular work which he was doing. ...

2. What emanates from the above is that the claimant was assessed as an unskilled workman. The Court is of the view that in the labour market, where unskilled workmen offer their physical labour, the fittest or the fitter person is chosen for employment. A handicapped person will in all likelihood be overlooked. Therefore, for a person who has suffered the extent of injury as noted hereinabove, it would surely affect her/his chances of employment as well as affect the ability to render optimal services. In the circumstances, for the learned Tribunal assessing the physical disability of 35% in the left

lower limb and right upper limb as 20% apropos the whole body does not call for any interference.”

5. Therefore his functional disability is near 100%. However, since the appellant would be able to enroll himself in another vocation in due time and can otherwise move about with some assistance, the functional disability is assessed at 90% and the same is awarded to him. The ‘loss of dependency’ shall be computed as under:-

Rs. 3,683/- (minimum wage) x 12 months) x 13 (multiplier) x 125/100 (loss of future earning) x 90/100 (functional disability) = Rs. 6,46,367/-.

6. The appellant was 50 years of age at the time of the injury. Accordingly, addition of 25% shall be awarded to him towards ‘loss of future prospects’ and not 40% as awarded in the impugned order. Further, the Court would note that no monies have been granted towards ‘disfigurement’. Accordingly, an amount of Rs. 1,00,000/- is granted under the head of “disfigurement”.

7. Let the aforesaid amount, alongwith interest @9% from the date of filing of the claim petition till its realization, be deposited before the learned Tribunal, within three weeks from the date of receipt of copy of this order, to be released to the beneficiary of the Award, in terms of the scheme of disbursement specified therein.

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

9. A copy of this order be given *dasti* under the signature of the Court Master to the learned counsel for the parties.

NAJMI WAZIRI, J

NOVEMBER 27, 2019

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