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

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Decided on: 06.11.2019

+ **MAC.APP. 637/2018, CM APPL. 27563/2018, CM APPL. 46853/2018 & CM APPL. 12213/2019**

U P STATE ROAD TRANSPORT CORPORATION Appellant

Through: Mr. Shadab Khan, Adv. for
Ms. Garima Prashad, Adv.

versus

RAM ABHILAKH & ANR

..... Respondents

Through: Mr. Vipin Kumar Mishra, Adv. for
R-1.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J (Oral)

1. This appeal impugns the award of compensation dated 25.04.2018 passed by the learned MACT in MACT No. 14418/15 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. It has discussed the issue as under:

“15. PW-1 has stated in his affidavit vide Ex. PW 1/A that at the time of accident, he was running a tailor shop. PW-3 Dr. Deepankar Verma, Sr. Resident, Department of Orthopedics,

GTB Hospital, Delhi proved the disability certificate of petitioner which is Ex. PW3/1 deposing that patient is suffering 35% disability in relation to left lower limb and right upper limb. Due to the disability received, certainly his carrier prospects and life has been affected including his earning capacity. As stated, he was running a tailoring shop and in the opinion, he cannot perform his profession keeping in view of nature of work and injury/ age. It may be concluded that the accident/disability of the petitioner can reduce his efficiency and activities. In the facts and circumstances of the case and nature of disability of the petitioner, I assessed that due to disabilities sustained, his capacity has been reduced restricting him from carrying his work. Considering the evidence on record and facts of the case, the functional disability of the petitioner has been assessed as 20 % in relation to his whole body, in view of judgment of Raj Kumar V/s Ajay Kumar & Ors., (2011) 1 SCC 343.”

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.

3. There is no merit in the appeal. It is accordingly dismissed.

4. The learned counsel for the appellant submits that the awarded amount has been deposited before the learned Tribunal.

5. The learned counsel for the respondent no.1 submits that he has received the requisite amount.

6. The statutory amount, alongwith interest accrued thereon, deposited by the appellant shall be released to the injured/claimant as litigation costs.

NAJMI WAZIRI, J

NOVEMBER 06, 2019
SSC



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