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

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Decided on: 27.09.2019

+ MAC.APP. 835/2018, CM APPL. 37986/2018, CM APPL.

37988/2018 & CM APPL. 14699/2019

U P STATE ROAD TRANSPORT CORPORATION..... Appellant

Through: Ms. Garima Prashad and Mr. Shadab
Khan, Advocates.

versus

ASHAGAR ALI & ANR

..... Respondents

Through: Mr. Varun Sarin, Advocate for R-1.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Oral)

1. This appeal impugns the award of compensation dated 28.03.2018 passed by the learned MACT in MACT No. 4355/16 on the ground that the appellants, having paid the initially awarded amount of roughly Rs. 99,000/- have been burdened with a larger amount of compensation pursuant to the second round of assessment and adjudication. The latter assessment was occasioned on account of the claimants appeal to this Court when the case was remanded to the learned MACT for reassessment.

2. The impugned order has taken into consideration the Disability Certificate issued by the Medical Board of Safdarjung Hospital, New Delhi, which opined that the claimant has suffered 25% disability in relation to his

right lower limb. He was classified as a daily wager and minimum wages applicable to a daily wager at the relevant time in Delhi, was taken into consideration for calculation of the compensation. Additionally, he was awarded Rs. 2,00,000/- each for “pain and suffering”, “loss of amenities of life” and “loss of expectation of life”.

3. Furthermore, he was awarded Rs. 51,324/- for “loss of income during treatment”. The compensation towards “loss of future income” was computed on the basis of judgment of Delhi High Court in ***Laxmi Narain Vs. Trilochan Singh & Ors.***, FAO No. 289199, dated 04.05.2009, wherein total functional disability apropos the whole body was assessed at 12.5%, in the context of 25% disability in the right lower limb. Moreover, for loss of future prospects, the claimant was awarded 25% in terms of the dicta of Supreme Court in ***National Insurance Co. Ltd. vs. Pranay Sethi & Ors.***, (2017) 16 SCC 680, since the claimant’s age was between 40 to 50 years.

4. The aforesaid awarded amount is impugned on the ground that the appellant has been law abiding in promptly paying the first awarded amount. The Court would note that, promptness in payment of the first amount is the duty of the appellant as a necessary corollary to a judicial order, the same cannot become the basis for appeal against the revised award, which took into consideration the fact that a daily wager would to some extent, suffer in his vocation if he had been rendered 25% permanently disabled in his right lower limb. The impugned order has reasoned as under:

“9. Loss of future income: As per Election ID Ex. PW-1/2, petitioner was aged 25 years as on 01.01.1998 which implies that he was aged about 41 years on the date of accident. Petitioner has suffered 25% disability in relation to his right lower limb. It is natural that with the disability and injuries

suffered by the petitioner, his earning, capacity has been reduced. Present injury will diminish his earning capacity. 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 12.5%."

5. The Court is of the view that the real test apropos compensation is the degree of functional disability of the injured. The assessment of 12.5% functional disability apropos the 25% disability in the right lower limb, is justified and calls for no interference because the injured would not be the preferred daily wager apropos another person applying for the same employment who is not so disabled. The ability of the injured to move about would also be lessened to quite an extent, therefore, "loss of amenities" and "enjoyment of life" would be adversely affected with every waking movement. He would endure the "pain and suffering" through all his life therefore, the amounts awarded on these counts do not call for any interference.

6. The Court would note that the injured had a social duty to provide for the needs of his family and for taking care of his children. This responsibility would now be largely affected, leading to disappointment not only for him, but to the family also. In the circumstances, the award of compensation on each of the heads are justified and calls for no interference.

7. The claimant had to appear before this court six times, accordingly the statutory amount deposited by the appellant of Rs. 25,000/-, alongwith interest accrued thereon, shall be paid to the claimant as costs of these proceedings.

8. The interim order is vacated. The appeal is dismissed.

NAJMI WAZIRI, J

SEPTEMBER 27, 2019/AB

