



2024:DHC:5646



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

% **Date of Order: 1st August, 2024**

+ **MAC.APP 36/2020**

DHARMENDER SINGH

.... Appellant

Through:

Mr. O N Sharma, Advocate

versus

ASGAR IMAM & ORS (THE ORIENTAL INSURANCE CO LTD)

...Respondent

Through: Mr. Abhishekh Gola and Mr.
Anshul Kumar, Advocates for R-3
(Through VC)

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J

1. The instant appeal has been filed on behalf of the appellant under Section 173 of The Motor Vehicle Act, 1988 against the impugned judgment/award dated 15th October, 2019 passed by the learned MACT – 02, (Central) Delhi in MACT case bearing no. 57256/2016 (“impugned award”), seeking enhancement of the compensation amount as well as allow cost of litigation.

2. The relevant facts leading to the filing of the instant petition are as follows:

- a. On 21st August, 2015, the appellant was travelling from Wazirabad to Jagat Pur Village via Pushta Road on his bike bearing registration no. DL-9SM-3931 (“injured vehicle”), when one Indigo car bearing registration no. DL-4CU-8070 being driven by respondent no.1 (“offending vehicle”) came in a rash and negligent manner which caused

Signature Not Verified

Digitally Signed By: DAMINI ADAY
Signing Date: 08.08.2024
19:24:01



2024:DHC:5646



an accident. Due to the said accident, the appellant sustained multiple injuries for which he had to undergo treatment at the Trauma Centre. Moreover, the MLC bearing no.211022 was prepared.

- b. Thereafter, a claim petition was filed by the appellant bearing MACT case no. 57256/16 on 17th March, 2016 before MACT Tribunal on account of fatal injuries sustained by him due to the road accident.
- c. The learned Tribunal passed the impugned award on 15th October, 2019 wherein Rs.8,27,567/- was awarded to the appellant as compensation with interest @ of 9% per annum including interim award.
- d. Aggrieved by the quantum of compensation granted in the impugned award, the appellant has filed the instant appeal seeking enhancement of compensation.

3. The learned counsel appearing on behalf of the appellant submitted that the permanent disability of the appellant is 64% with respect to the right lower limb as per the statement of Dr. B Kanhar, Sr. Orthopedic Specialist and HOD Orthopedics, Aruna Asaf Ali Govt. Hospital, dated 17th January, 2019 whereas the learned Tribunal considered only 32% functional disability. Hence, the learned Tribunal erred in reducing the permanent disability of the appellant and wrongly assumed the functional disability on conjecture and surmise.

4. It is submitted that since the appellant is a commercial driver, 64% disability will have a severe impact on his occupation. As a commercial driver, he would require motor skills to operate commercial vehicles and his injury in his lower limbs would prevent him from engaging in his occupation since, it is impractical for a commercial vehicle driver to drive without proper functioning lower limbs. Thus, the appellant should be considered as 100% functional



2024:DHC:5646



disability.

5. It is submitted that the learned Tribunal has erred in passing the impugned award and ignored the degree of disability of the appellant as it failed to consider the position of law taken by the Hon'ble Supreme Court in ***Raj Kumar v. Ajay Kumar***(2011) 1 SCC 343 which states that a tribunal should not be silent in case medical where evidence is tendered in regard to the injuries and their effect.

6. It is submitted that the future prospects at 50% of the income of the appellant have not been taken into consideration by the learned Tribunal, which is contrary to the legal principle laid down in the case of ***Dr. Balram Prasad v. Dr. Kunal Saha & Ors.***(2014) 1 SCC 384 which states that loss of future prospects should be added to the amount of compensation.

7. It is submitted that the learned Tribunal has not considered that the appellant is a semi-skilled labour. It is further submitted that since the appellant was a commercial driver, he should be classified as semi-skilled labour and not unskilled labour.

8. It is submitted that the learned Tribunal has failed to consider the future prospect, future rise in income and expenses of future treatment of the appellant while passing the impugned award.

9. It is submitted that the learned Tribunal has awarded meager sums for pecuniary and non-pecuniary losses, future losses, future medical treatment, enjoyment of life and attendant charges as well as no amount has been granted under the heads of cost of litigation and disfigurement.

10. Therefore, in light of the foregoing submissions, it is prayed that the present appeal may be allowed and reliefs may be granted, as prayed.





2024:DHC:5646



11. *Per Contra*, the learned counsel appearing on behalf of respondent no.3 vehemently opposed the averments made by the appellant submitting to the effect that the learned Tribunal has correctly adjudged the degree of functional disability of the appellant as well as the quantum of compensation awarded to the appellant.

12. It is submitted that the findings of the learned Tribunal are just and fair, and the same have been concluded on the basis of the evidence produced by the appellant and respondent no.1.

13. It is submitted that the learned Tribunal rightly considered the functional disability of the appellant as 32% after considering the disability certificate. It is further submitted that the learned Tribunal rightly considered the testimony of PW-2 and considered the job/work of the petitioner which was that of being self-employed. It is also submitted that the learned Tribunal has rightly observed the percentage of functional disability arising out of physical disability.

14. It is submitted that the appellant has admitted in his cross- examination that he was a night watchman from 10 am to 6 pm, hence he is not 100% disabled to earn his livelihood. Therefore, there is no 100% loss of earning capacity of the appellant.

15. It is further submitted that that Dr. B Kanhar in his cross -examination deposed that the appellant is in a position to drive a vehicle that is meant for handicap persons hence, the appellant is not 100% disabled from earning a living.

16. It is submitted that it is a settled position of law that if the business of the injured is still operative after his injury, the loss of dependency/ loss of future



2024:DHC:5646



income shall be awarded to the extent of expenses incurred by the claimants on account of the salary of the employer.

17. It is submitted that the appellant is not entitled for enhancement of compensation under any other head since nothing has been brought on record to substantiate the same. It is further submitted that the learned Tribunal has already awarded compensation under the heads of pain and sufferings, loss of amenities as well as enjoyment of life and towards special diet.

18. It is submitted that the appellant could not establish his source of income and the learned Tribunal has rightly appreciated the same in order to assess the quantum of compensation.

19. Hence, in view of the forgoing submissions, it is submitted that the appeal may be dismissed.

20. Heard the learned counsels appearing for the parties and perused the records.

21. Appeal is admitted.

22. It is the case of the appellant that the learned Tribunal has incorrectly determined the functional disability of the appellant as 32% whereas, the permanent disability of the appellant was 64% and he was entitled to functional disability of 100% as he is a commercial vehicle driver. It is contended that the appellant would not be able to perform his job as a commercial vehicle driver in light of his permanent disability with respect to his right lower limbs. It is further contended that the learned Tribunal has failed to appreciate that the appellant was a semi-skilled labour and his future prospect, future rise in income and expenses associated with future treatment are incorrectly computed by the learned Tribunal.



2024:DHC:5646



23. It is contended that the compensation amount for pecuniary and non-pecuniary losses awarded to the appellant by the learned Tribunal are insufficient in light of his occupation i.e., commercial vehicle driver and a night guard.

24. In rival submissions, it is the case of the respondent no. 1 that the learned Tribunal has correctly adjudged the degree of functional disability of the appellant as 32% based on the evidence on record which indicates that the appellant has not lost 100% of his source of earning. It is contended that the appellant can still drive vehicles designed for persons with disabilities and earn a living.

25. It is contended that the appellant has failed to prove his source of income as a commercial driver and as a night guard which implies that he cannot be given the benefit of being engaged in the aforementioned occupations for the purpose of computing his salary.

26. It is contended that no sum should be awarded to the appellant as the cost of litigation and the impugned award is just, fair and valid in law. It is further submitted that the appellant has been given interest @ 9% p.a. which is already quite high therefore, the appellant is not entitled for enhancement of compensation.

27. The limited challenge before this Court is whether the appellant is entitled for enhancement of compensation as sought in the instant appeal.

28. At this juncture, this Court deems it pertinent to peruse the impugned award passed by the learned Tribunal pertaining to the quantum of compensation. The relevant extracts of the same have been reproduced as under:

ISSUE NO.2 : COMPENSATION

NATURE OF INJURIES AND REIMBURSEMENT OF MEDICAL

Signature Not Verified

Digitally Signed By: DAMINI ADARSH
Signing Date: 08.08.2024
19:24:01





2024:DHC:5646

**BILLS:**

18. As per Medical Record, the petitioner has suffered grievous injuries. The petitioner has filed the medical bills to the tune of Rs. 52,625. Therefore, I hereby grant a sum of Rs. 52,625/- towards medical bills keeping in view the nature of injuries and medical bills placed on record.

19. PAIN AND SUFFERINGS :

It is settled law that a particular amount cannot be fixed for pain and sufferings in all the cases and it varies from case to case., Judicial notice can be taken to the fact that Since the petitioner had got injuries as aforesaid ,he might have suffered acute pain and sufferings owing to the said injuries. He might have taken heavy dose of anti-biotic etc. and also might have remained without movements of his body for a considerable period of time. In order to ascertain the pain and sufferings compensation, I am. guided by the judgment of Hon'ble High Court of Delhi in case Satya Narain v/s Jai Kishan , FAO No:709/02, date of decision: 2,2,2007, Delhi High Court by Hon'ble Mr, Justice Pradeep Nandrajog wherein it was held that:-

"On account of pain and suffering, suffice would it be to note that, it is difficult to measure pain and suffering in terms of a money value. However, compensation which has to be paid must bear some objectives co-relation with the pain and suffering.

The objective facts relatable to pain and suffering would be:

- (a) Nature of injury.
- (b) Body part affected:
- (c) Duration of the treatment."

20. Keeping in view the said guidelines, nature of injuries and duration of treatment, I hereby, grant Rs. 50,000/- towards pain and sufferings, I hereby award a sum of Rs. 30,000/- towards special diet and conveyance.

21. LOSS OF INCOME DURING TREATMENT PERIOD

The petitioner was stated to be self-employed and driving his vehicle and was stated to be earning Rs, 30,000/- per month and apart from that he is





2024:DHC:5646



stated to be doing the duty of Guard at night and earning Rs. 10,000/- per month from the said duty but no income proof has been filed or proved on record. Keeping in view the nature of injuries, duration of treatment as per medical record, it appears to me that petitioner could not have worked for about six months. In these circumstances, the Income of the petitioner can very well be assessed on the basis of the chart available, in. the" Minimum Wages Act, The date of accident was 21.08.2015 on which the Minimum Wages for Unskilled Persons were Rs. 9048/-. Accordingly, I award Rs. 54,288/- (Rs. 9048/- X 6) towards loss of income.

22, COMPENSATION ON ACCOUNT OF DISABILITY:

PW-2 Dr. B. Kanhar, has proved the disability certificate, Ex. PW2/1.

As per the disability certificate Ex.PW2/1, the petitioner has got 64% permanent physical impairment in relation to his right lower limb (as mentioned In the disability certificate Ex.PW2/1).

23. It is settled law that it is the percentage of functional disability arising out of physical disability which matters while assessing the compensation arising out of disability. On this aspect, I gain support from judgment of Hon'ble Supreme Court in Raj Kumar vs. AJay Kumar &Ors, reported as 2011ACJ in which it was held as under;-

"11. What requires to be assessed by the Tribunal is the effect of the permanently disability on the earning capacity of the injured; and after assessing the loss of earning capacity in terms of a percentage of the income, it has to be quantified in terms of money, to arrive at the future loss of earnings (by applying the standard multiplier method used to determine loss of dependency). We may however note that in some cases, on appreciation of evidence and assessment, the Tribunal may find that percentage of loss of earning capacity as a result of the permanent disability, Is approximately the same as the percentage of permanent disability in which case, of course, the Tribunal will adopt the said percentage for determination of compensation (see for example, the decisions of this Court in Arvind Kumar Mishra v NewIndia Assurance Co: Ltd. 2010(10) SCC 254 and Yadava Kumar v D. M. National Insurance Co. Ltd.2010(10) SCC 341."





2024:DHC:5646



13. Ascertainment of the effect of the permanent disability on the actual earning capacity involves three steps. The Tribunal has to first ascertain what activities the claimant could carry on In spite of the permanent disability and what he could not do as a result of the permanent ability (this is also relevant for awarding compensation under the head of loss of amenities of life). The second step is to ascertain his avocation, profession and nature of work before the accident, as also his age. The third step is to find out whether (i) the claimant is totally disabled from earning any kind of livelihood, or (ii) whether in spite of the permanent disability, the claimant could still effectively carry on the activities and functions, which he was earlier carrying on, or (Hi) whether he n/as prevented or restricted from discharging his previous activities and functions, but could carry on some other or lesser scale of activities and functions so that he continues to earn or can continue to earn his livelihood.

14. For example, if the left hand of a claimant is amputated, the permanent physical or functional disablement may be assessed around 60%. If the claimant was a driver or a carpenter, the actual loss of earning capacity may virtually be hundred percent, ifhe is neither able to drive or do carpentry. On the other hand, if the claimant was a clerk In government service, the loss of his left hand may not result in loss of employment and he may still be continued as a clerk as he could perform his clerical function's; and in that event the loss of earning capacity will not be100% as in the case of a driver or carpenter, nor 60%which is the actual physical disability, but far less, in fact, there may not be any need to award any compensation under the head of loss of future earnings', if the claimant continues in government service, though he may be awarded compensation under the head of loss of amenities as a consequence of losing his hand. Sometimes the injured claimant may be continued in service but may not found suitable for discharging the duties attached to the postor job which he was earlier holding, on account of his disability, and may therefore be shifted to some other suitable but lesser post with lesser emolument. In which case there should be a limited award under the head of loss of future earning capacity, taking note of the





2024:DHC:5646



reduced earning capacity."

24. After going through the testimony of, PW-2 and keeping in view the job/work of the petitioner i.e. self-employed I am of the opinion that permanent disability of 64% in relation to permanent physical impairment in relation to left lower limb shall effect 32% upon his working capacity.

2-5. As per the copy of the PAN Card of the petitioner, the date of birth put forth of the petitioner is 01.01.1988. The date of accident was 21.08.2015. Accordingly, the petitioner was around 27 years of age on the date of accident.

26. Accordingly, the petitioner was around 27 years of age as on the date of accident for which the relevant multiplier 17, as mentioned in Sarla Verma Vs. DTC decided on 15.4.2009 in C.A. No. 3483108 is applicable.

Accordingly, the loss of income due to permanent disability in future is computed with the multiplier of 17 as Rs. 5,90,653.44/- (Rs.9048X32/100X12X17). Same is rounded off to Rs. 5,90,654/-

27. LOSS OF GENERAL AMENITIES & ENJOYMENT OF LIFE |

In view of the nature of injuries including permanent disability suffered by him and his continued treatment for considerable period, I award; a notional sum of Rs.. 50,000/- as compensation towards loss of amenities of life and enjoyment of life (Reliance placed on "IFFCO TOKIO GENERAL INSURANCE COMPANY LTD VS. ARJUN & ORS., MAC APP. NO. 0112013, DECIDED ON 04.01.2018 B Y HON'BLE HIGH COURT OF DELHI).

The total compensation is assessed as under:-

Treatment expenses:	Rs. 52, 625/-
Pain and sufferings:	Rs. 50,000/-
Conveyance & special diet:	Rs. 30,000/-
Loss of Income during treatment period	Rs. 54, 288/-
Compensation on account of disability	Rs. 5, 90, 654/-
Compensation on account of loss of	<u>Rs. 50,000/-</u>

Signature Not Verified

Digitally Signed By: DAMINI ADAR APP. 36/2020
Signing Date: 08.08.2024
19:24:01



2024:DHC:5646



*amenities of life and
enjoyment of life
Total*

Rs. 8,27, 567/-

28. RELIEF:

I award Rs. 8.27.567/- (Rupees Eight Lakh Twenty Seven Thousand Five Hundred Sixty Seven Only as compensation with interest at the rate of 9% per annum including interim award, if any from the date of filing the DAR I.e. 17/03/2016 till realization in favour of the petitioner and against respondents on account of their liability being joint and several.

29. Petitioner's statement was recorded on 23.07.2019 regarding his financial status in terms of Clause 27 of Rajesh Tyagi &Ors. Vs. Jajbir Singh &Ors., FAG No. 842/2003 decided by Hon'ble High Court of Delhi on December 15, 2017, wherein he testified that he needs about Rs. 15,000/-per month for his household expenses.

Acting on the guidelines issued by Hon'ble High Court of Delhi in FAQ 842/2003 titled as Rajesh Tyagi &Ors Vs Jaibir &Ors dated 07/12/2018, a sum of Rs. 47,567/- be released to petitioner from the award amount and balance amount of Rs. 7,80,000/- in terms of the directions contained in, FAO No. 842/2003 dated December 07, 2018 shall be put in 52 monthly fixed deposits in his name in a nationalized bank of equal amount of Rs. 15,000/- each for a period of one month to 52 months.

It is further directed that the interest accumulated on the principal amount from the date of filing of the DAR till realization be also kept in the monthly FDRs of equal amount in the same ratio mentioned above, which shall be in continuation of the FDRs of the principal amount.

[For Example, if a sum of Rs. 7,80,000/- is put in 52 FDRs of equal amount of Rs. 15,000/-, the interest from the date Of filing the petition till realization be put in FDRs as 53,54 monthly FDRs]

Besides the above-mentioned amount, amount of FDR on maturity shall automatically be transferred, in the saving account maintained in a nationalized bank near the place of his residence without the facility of cheque book and ATM Card. It is clarified that the amount shall be released to them only on submitting the copy of passbook of such saving

Signature Not Verified

Digitally Signed By: DAMINI ADAY
Signing Date: 08.08.2024
19:24:01



APP. 36/2020



2024:DHC:5646



account with endorsement of the bank that no cheque book facility and ATM Card has been issued or if has been issued, same has been withdrawn and same shall not be issued without the prior permission of this tribunal.”

29. The learned Tribunal addressed three issues in passing the impugned order. The first issue was whether the appellant suffered injuries in the accident that took place on 21st August, 2015 involving the offending vehicle being driven and owned by respondent no. 1. The second issue was whether the appellant is entitled to compensation and its quantum. The third issue was the relief. For the purpose of adjudication of the present case, issue no.2 and 3 are relevant.

30. With respect to issue no. 2 i.e. *whether the appellant is entitled to compensation and its quantum*, the learned Tribunal provided reasoning under different heads of compensation and awarded a total compensation of Rs.8,27,567/-.

31. Under the head of ‘nature of injuries and reimbursement of medical bills’, the learned Tribunal observed that the appellant suffered multiple injuries and grievous hurt, as per the medical record that was placed on the record. The appellant filed medical bills to the tune of Rs.52,625/- which were liable to be paid to the appellant. Accordingly, the learned Tribunal granted amount of Rs.52,625/- towards the nature of injuries and reimbursement of medical bills.

32. Under the head of ‘Pain and Sufferings’, the learned Tribunal noted that it is the settled position of law that no particular amount can be fixed for pain and suffering. It was further observed that since the appellant had been injured, he may have suffered acute pain owing to his injuries and may have remained without bodily movement for a considerable period of time. The learned

Signature Not Verified

Digitally Signed By: DAMINI ADAY
Signing Date: 08.08.2024
19:24:01



APP. 36/2020



2024:DHC:5646



Tribunal relied on the case of *Satya Narain v. Jai Kishan*, FAO No. 709/02 dated 2nd February, 2007, wherein it was held that the pain must have an objective correlation with the suffering experienced and it shall take into consideration the factors such as the nature of the injury, the affected body part, and the duration of the treatment.

33. Accordingly, a sum of Rs. 50,000/- was awarded by the learned Tribunal towards pain and sufferings. Furthermore, a sum of Rs. 30,000/- was awarded towards special diet and conveyance.

34. Under the head of 'loss of income during treatment period', the learned Tribunal observed that the appellant claimed that he was earning Rs. 30,000/- per month by driving his vehicle and Rs. 10,000/- per month as a watchman doing night duty. However, no income proof was filed on record. In light of his injuries, he was not able to work for a period of 6 months.

35. Accordingly, the learned Tribunal assessed his income based on the chart in the Minimum Wages Act, 1923 from the date of the accident i.e. 21st August, 2015 i.e., Rs.9048/-and awarded Rs.54,288/- (Rs. 9048 x 6) towards loss of income.

36. Under the head of 'compensation on account of disability', the learned Tribunal took into consideration the fact that PW-2 Dr. B. Kanhar, testified in support of the disability certificate Ex. PW2/1 which stated that the appellant had 64% permanent physical impairment in relation to his right lower limb.

37. Further, the learned Tribunal relied on case of *Raj Kumar v. Ajay Kumar* (2011) 1 SCC 343 wherein it was held by the Hon'ble Supreme Court that the Tribunal must assess the effect of permanent disability on the earning capacity of the injured. In the abovementioned case, it was held that a three- step process



2024:DHC:5646



must be carried out where the tribunal must first assess the activities the claimant could and could not carry out given his permanent disability. Second, the tribunal must ascertain the avocation, profession and nature of work of the claimant before the accident and his age. Third, the tribunal must ascertain whether the claimant is totally disabled from earning any kind of livelihood, whether the claimant can still effectively carry out activities and functions and whether he was prevented or restricted from discharging his previous activities and functions but could carry out some other or lesser scale of activities to sustain his living.

38. In the present case, the learned Tribunal perused the testimony of PW-2, the job of the appellant i.e. self-employed and held that in relation to 64% permanent disability, 32% functional disability was awarded. The age of the appellant was 27 years at the time of the accident as per his PAN Card and the relevant multiplier was 17. Therefore, the loss of income awarded was Rs. 5,90,653.44/- (Rs. 9048 x 32/100 x 12 x 17) (Rounded off to Rs.5,90,654/-).

39. Under the head of 'Loss of general amenities and enjoyment of life', the learned Tribunal took note of the permanent disability suffered by the appellant and awarded a notional sum of Rs.50 000/- relying on the judgment of **IFFCO Tokio General Insurance Company Ltd. vs. Arjun &Ors.** dated 4th January, 2018 in MAC APP. NO. 011/2013.

40. Thus, the learned Tribunal awarded compensation under the heads of treatment expense, pain and sufferings, conveyance and special diet, loss of income during treatment period, compensation on account of disability, compensation on account of loss of amenities of life and enjoyment of life in light of the permanent disability of the appellant.



2024:DHC:5646



41. Pertaining to the third issue i.e., Relief, it is observed that the learned Tribunal held in favor of the appellant and awarded an amount of Rs.8,27,567/- which includes interest calculated @ 9% per annum from the date of filing i.e., 17th March, 2016.

42. In light of the submissions made by the parties, the issue before this Court is whether the appellant is entitled for an order for enhancement of compensation for the appellant and allow costs for litigation. In order to adjudicate upon this issue, it is pertinent to determine whether the functional disability of the appellant was correctly determined by the learned Tribunal.

43. It has been contended by the appellant that the learned Tribunal failed to provide him with adequate compensation and wrongly considered the percentage of disability. The same being erroneous is liable to be set aside and the compensation ought to be enhanced.

44. In order to determine the merits of the appeal on issue no.2, it is pertinent to understand the settled position of law on the same. The amount of compensation awarded to victims of accidents must be fair, reasonable and just.

45. In the case of ***K. Suresh v. New India Assurance Co. Ltd., (2012) 12 SCC 274***, the Hon'ble Supreme Court discussed the role of the adjudicating authority in determining compensation. The position of law taken by the Hon'ble Supreme Court is that courts and tribunals face a challenge when deciding how much compensation is to be awarded to an injured person. Tribunals consider the pain and suffering, the limitations caused by the injury, and the impact on the person's ability to earn a living. Though, there is no perfect formula, and some degree of estimation is required to account for the ongoing effects of the injury. The ultimate goal is to award "just compensation,"



2024:DHC:5646



which means providing a fair amount of money to reflect the significant ways the injury has disrupted the person's life. The relevant paragraph has been reproduced below:

"It is noteworthy to state that an adjudicating authority, while determining the quantum of compensation, has to keep in view the sufferings of the injured person which would include his inability to lead a full life, his incapacity to enjoy the normal amenities which he would have enjoyed but for the injuries and his ability to earn as much as he used to earn or could have earned. Hence, while computing compensation the approach of the Tribunal or a court has to be broad based. Needless to say, it would involve some guesswork as there cannot be any mathematical exactitude or a precise formula to determine the quantum of compensation. In determination of compensation the fundamental criterion of "just compensation" should be inhered."

46. In the case of ***Sarnam Singh v. Shriram General Insurance Company Limited and Ors. (2023) 8 SCC 193***, the Hon'ble Supreme Court held that in case where permanent disability of an injured affects functional disability, it is to be assessed by the Court. It is the role of the adjudicating authority to award compensation keeping in mind the occupation of the injured party. The relevant paragraph has been reproduced below:

"10. ...In fact, any physical disability resulting from an accident has to be judged with reference to the nature of the work being performed by the person who suffered disability. The same injury suffered by two different persons may affect them in different ways. Loss of leg by a farmed or a rickshaw puller may be end of the road as far as his earning capacity is concerned. Whereas, in case of the persons engaged in some kind of desk work in office, loss of leg may have lesser effect. This Court enhanced the loss of earning capacity from 50% to 90%."

47. Upon perusal of the aforementioned judicial *dicta*, it is observed that it is the role of the adjudicating authority to evaluate the permanent disability of the





2024:DHC:5646



victim in the context of the occupation of the appellant. This evaluation must be done by understanding the tasks that can and cannot be performed by the victim which are quintessential for his occupation, in light of his permanent disability. The settled position of law with regard to the same is that the occupation of the injured needs to be thoroughly considered by understanding the tasks that can be performed by the injured in light of his permanent disability.

48. In the instant appeal, the learned Tribunal has awarded a compensation to the tune of Rs.8,27,567/- which is a composite amount including amount for pain and suffering, loss of income during treatment period, compensation on account of disability, loss of general amenities and enjoyment of life.

49. As per EX PW 2/1, statement of Dr. B Kanhar, Sr. Orthopedic Specialist and HOD Orthopedics, Aruna Asaf Ali Govt. Hospital, testified that the disability of the appellant is 64% on account of disability in the right lower limb. This Court observes that the learned Tribunal has not cited proper reasoning as to why 64% permanent disability would impact only 32% of the working capacity of the appellant in light of the work performed by him.

50. It is pertinent to note that the learned Tribunal has ascertained the degree of disability by relying on testimony of a witness as well as the disability certificate verification. The learned Tribunal held that the 64% permanent disability of the lower limb as per the disability certificate on record shall effect 32% of the working capacity of the appellant however it does not discuss the relationship between 64% permanent disability vis-a-vis 32% functional disability.

51. The learned Tribunal observed that the appellant failed to prove his occupation as a commercial driver and determined his source of earning based



2024:DHC:5646



on the chart provided in the Minimum Wages Act, 1948. Though the appellant placed on record the copy of the card of his employer as well as equated monthly instalment documents in relation to the loan for his commercial vehicle, this Court observes that he was unable to prove that that he was unable to prove his sources of earning.

52. It is held that sufficient cause has not been shown by the learned Trial Court as to why 64% permanent disability would result in 32% functional disability given that the appellant was self-employed.

53. It is further held that there needs to be sufficient reasoning accorded when the functional disability is reduced even though the evidence on record shows that it is higher. The mere determination of the appellant as unskilled labour is insufficient to award half the disability benefit to the appellant. Thus, it is observed by this Court that the learned Tribunal has erroneously given the functional disability of 32% where the evidence on record proves the disability of the appellant to be 64%, therefore, the compensation awarded to the appellant is liable to be modified in terms of the settled position of law.

54. This Court has perused the evidence placed on record and noted that the appellant has failed to produce any evidence proving that he was earning as a guard or a commercial vehicle driver. In the absence of his sources of earning, the chart prescribed under the Minimum Wages Act, 1948 relied upon to award compensation. This Court agrees with the finding of the learned Tribunal in this regard, that since the appellant has failed to prove his source of income by placing documents on record, he cannot be considered as semi-skilled labour. Thus, this Court is not interfering in the finding of the learned Tribunal regarding the appellant being an unskilled worker.



2024:DHC:5646



55. Accordingly, this Court modifies the loss of income as follows:

- a. Monthly income of appellant: Rs. 9,048/-
- b. Future prospects = 40% (age of the victim was 27 years at the time of the accident)= Rs. 3,619.2/-
- c. Adjusted income = 9,048/- + 3,619.2/-
= Rs. 12, 667.2/- (Rounded off to Rs. 12, 667/-)
- d. Percentage of disability suffered by the appellant: 64%
- e. Annual Income: Rs. 12,667/- x 12 = Rs. 1,52, 004/-
- f. Multiplier = 17 (since the appellant was 27 years at the time of the accident)
- g. Compensation on account of disability = Rs. 1,52,004/- x 17 x 64/100
=Rs. 16, 53, 803.52/- (Rounded off to Rs. 16, 53, 804/-).

In the circumstances of the case, the award of compensation is tabulated herein below:

Treatment expenses:	Rs. 52, 625/-
Pain and sufferings:	Rs. 50,000/-
Conveyance & special diet:	Rs. 30,000/-
Loss of Income during treatment period	Rs. 54, 288/-
Compensation on account of disability	Rs. 16, 53, 804/-
Compensation on account of loss of amenities of life and enjoyment of life	Rs. 50,000/-
Total	Rs. 18,89,411/-

56. Accordingly, the impugned order stands modified in terms of the amount awarded under the head of 'compensation on account of disability' from **Rs.5,90, 654/- to Rs.16, 53, 804/-.**

Signature Not Verified

Digitally Signed By: DAMINI ADARSH
Signing Date: 08.08.2024
19:24:01



2024:DHC:5646



57. In light of the foregoing discussions on law as well as facts of the instant case, the impugned award dated 15th October, 2019 passed by the learned MACT-02, (Central) Delhi in MACT case bearing no. 57256/2016 stands modified in view of the aforesaid terms.

58. This Court directs respondent no.3 to pay the appellant the difference in compensation as against the amount awarded by the learned Tribunal to the appellant within a period of thirty days from the date on which a copy of this order is received, after adjusting the amount already deposited/paid.

59. Accordingly, the instant appeal is partly allowed and stands disposed of along with pending applications, if any.

60. The order to be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

AUGUST 1, 2024
NA/AA/DB