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

Date of Decision: 31.01.2023

\+ MAC.APP. 15/2018 & CM APPL. 308/2018 -Stay.

SHRIRAM GENERAL INSURANCE CO LTD ..... Appellant

Through: Mr.Sameer Nandwani with Ms.Nikita Sharma, Advs.

versus

SANTOSH KUMAR SINGH & ORS ..... Respondent

Through: Mr.Ajit Rajput with Mr.Ajeet Kumar, Mr.Gopi Chand, Advs.

\+ MAC.APP. 377/2018 & CM APPL. 507/2021 -Substituted service.

SANTOSH KUMAR SINGH ..... Appellant

Through: Mr.Ajit Rajput with Mr.Ajeet Kumar, Mr.Gopi Chand, Advs.

versus

IRSHAD & ORS (SRI RAM GENERAL INSURANCE COMPANY LTD) ..... Respondent

Through: Mr.Sameer Nandwani with Ms.Nikita Sharma, Advs for R-3.

CORAM:
HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J(ORAL)

1. The present two appeals under Section 173 of the Motor Vehicles Act (the Act), assail the award dated 25.09.2022 passed by learned Motor Accident Claims Tribunal, Dwarka Courts, New Delhi. While the insurer by

way of MAC appeal no. 15/2018 assails the quantum of compensation awarded towards loss of future prospects to the claimant as also the compensation towards the loss of income suffered by the claimant during the period when he was stated to be incapable of discharging any duty, the claimant by way of MAC 377/2018 seeks enhancement of compensation awarded towards loss of future prospects.

2. The brief factual matrix as emerging from the record shows that on 23.06.2015, when the claimant Sh.Santosh Kumar Singh was travelling to Haridwar in a car bearing registration no. DL-1C-3990, the said car met with an accident near police post Gang Nahar, Police Station-Bahadrabad, Uttaranchal. It is the common case of the parties that the vehicle involved in the accident was a 'Max Pick Up' bearing registration no. UA-08D-9793. An FIR was promptly registered at the Police Station Bahadrabad, Haridwar against the respondent no.2. The claimant, who suffered grievous injuries in the accident and a permanent disability of 57% in his upper and lower limbs, filed a claim petition under Section 166/140 of the Act.

3. The learned Tribunal, after considering the evidence before it, came to the conclusion that the claimant suffered injuries caused by respondent no.2, who was driving the aforesaid Max Pick Up insured by Shriram General Insurance Company Ltd, the appellant in MAC APP 15/2018. Taking into account that the claimant was working in a travel agency, namely Yatra.com and had suffered 57% permanent disability due to the accident, the learned Tribunal came to a conclusion that his functional disability was in fact 29%. Compensation towards loss of income was accordingly calculated on the basis of this functional disability of 29% and an award for a sum of Rs. 36,47,940/- was passed, which amount included a sum of Rs. 28,14,912/-

towards disability and future loss of earning.

4. Being aggrieved with the compensation towards disability and future loss of earning, both the insurer and the claimant have preferred the present appeals.

5. In support of the appeal, learned counsel for the claimant submits that the learned Tribunal has failed to appreciate that the earning capacity of the claimant had reduced considerably on account of the 57% permanent disabilities suffered by him in his upper and lower limbs. The claimant was working as a Travel Agent, who, besides performing a desk job, was required to attend and interact with prospective customers and was thus required to move frequently. On account of this disability of 57%, the claimant is not in a position to carry out his job as effectively as he was performing earlier. He, thus, contends that the learned Tribunal had erred in treating the functional disability of the claimant as only 29%. He, therefore, prays that the compensation granted under the head 'future loss of earning' be suitably enhanced.

6. *Per contra*, Mr. Sameer Nandwani, learned counsel for the insurance company contends that the learned Tribunal failed to appreciate that despite the claimant suffering 57% permanent disability in his upper and lower limbs, his earning capacity has not been affected as he is continuing to work on the same position in Yatra.com as before. He submits that the claimant was performing a desk job which did not involve any movement and therefore, he is still able to efficiently discharge his duties as a Travel Agent. He therefore contends that the learned Tribunal erred in granting him compensation towards future loss of income when his earning capacity has not been affected at all. He, therefore, prays that the impugned award, in so

far as it grants compensation to the claimant towards loss of future earning be set aside.

7. Having noted the factual matrix and the rival submissions of the parties, it would be appropriate to first refer to the findings of the learned Tribunal qua the compensation granted under the head of loss of future earnings and functional disability. It would, therefore, be useful to refer to para 18-21 of the impugned judgment, which reads as under:-

DISABILITY / FUNCTIONAL DISABILITY

*"**18.** In Case bearing **No. 1349/16 titled as Santosh Kumar Singh Vs. Mohd. Irshad & Ors.**, as per disability certificate Ex.PW-7/1 injured has suffered **57%** Disability*

For the purpose of assessing the functional disability of the injured following factors shall have to be taken into consideration:-

a) Extent of disability.

b) Portion of the body affected by the accident.

c) Nature of job/work performed by the injured

d) Whether disability has affected his work.

e) If likely to improve in future or not.

f) Possibility of alternative employment

***19.** In **Arun Kumar Vs. Nand Kishore & Ors. MAC APP No. 193/2011 dated 29/11/2012,** it has been observed as under:-*

"10. In Raj Kumar v. Ajay Kumar & Anr., 2011 (1) SCC 343, the Supreme Court brought out the difference between permanent disability and functional disability resulting in the loss of earning capacity. It was laid down that the compensation on account of loss of earning capacity has to be granted in accordance to the nature of job undertaken by the victim of motor accident. Paras 11 and 14 of the report are extracted hereunder:

> *"11. What requires to be assessed by the Tribunal is the effect of the permanently disability on the 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. New India Assurance Co. Ltd. 2010 (10) SCC 254 and Yadava Kumar v. D.M. National insurance Co. Ltd. 2010 aO) SCC 341.

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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, if he 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 functions; and in that event the loss of earning capacity will not be 100% as in the case of a driver or carpenter, nor 60% which is the actual physical disability, but for 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 consequent 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 post or 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 emoluments, in which case there should be a limited award under the head of loss of future earning capacity, taking note of the reduced earning capacity.

His hardship is further pleased to observe as under-

> *11. "in the absence of any specific evidence with regard to the exact functional disability, relying on Raj Kumar wherein Supreme Court took 45% disability in respect of the left lower limb as 20% loss of future earning capacity, i would take 70 % locomotor impairment in relation to the left lower limb as 35% loss of earning capacity". (Emphasis supplied)*
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> ***20.** In facts of the case keeping in view the settled principal law and not ruling out guess work since victim has suffered 57% of permanent disability, hence, his total permanent bodily disability is taken as 29 % total permanent bodily disability."*
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> ***FUTURE LOSS OF EARNING***
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> *21. In Case bearing No, 1349/16 titled as Santosh Kumar Singh Vs. Mohd. Irshad & Ors., taking into consideration that the injured has 29% permanent disability, therefore', he has incurred loss of future earning capacity. Since, injured was 35 years old at the time of accident and having permanent job, thus, he is entitled for future prospects of 50% over his income as per Saria Verma's Judgment, hence his income will be calculated as Rs.33,702 + 50% = Rs.50,553/- injured has 29% disability hence he has future loss of income rounded to Rs.14,661/- per month. Thus, injured is entitled for Rs.14,661 X 12 X 16 =Rs.28,14,912/- (Twenty eight lacs fourteen thousand nine hundred twelve only) towards the head 'Future Loss of Earning'.*

8. As noted hereinabove, the plea of the insurer is that the claimant was performing a desk job and is still able to discharge his duties efficiently and, therefore, no compensation ought to have been granted to him under the head 'future loss of earning'.

9. Even though this plea of the insurer appears to be attractive at first blush, this Court cannot lose sight of the harsh reality that a person, who is suffering from 57% disability will definitely suffer inconvenience and pain,

not just in discharging his duties but in every walk of life, which will certainly reduce his productivity even in a desk job. I find that despite the claimant suffering from 57% permanent disability, the learned Tribunal has taken his functional disability only as 29%. This is perhaps because of the fact that the claimant is still able to move around, though with difficulty. I am therefore, unable to accept this plea of the insurer that merely because the claimant is still working on the same job, he has suffered no loss of future income. When the claimant is suffering from 57% permanent disability, his efficiency would have certainly reduced. I, therefore, find no merit in the appeal of the insurer, which is accordingly dismissed.

10. Now coming to the claimant's plea that his functional disability ought to have also been considered as 57% as per his disability certificate. Having given my thoughtful consideration to this submission, I am regrettably not inclined to agree with the claimant. Even though, it is undisputed that he is suffering from 57% permanent disability, the fact remains that he is carrying out, primarily, a desk job. Even though, while discharging his duties, the claimant is required to interact with customers and it is not as if he cannot move at all. In fact, it is the own case of the claimant that he cannot sit at a stretch for very long in one position and therefore requires to keep moving after regular intervals.

11. In view of this admitted position, I am of the considered view that the learned Tribunal has rightly taken the claimant's functional disability to have been reduced by 28%. I, therefore, find no infirmity with the finding of the learned Tribunal qua the percentage of the claimant's functional disability or qua the compensation granted towards loss of future earnings

12. In the light of the aforesaid, both the appeals along with pending

applications, being meritless are, accordingly dismissed. As the insurer has already deposited the entire awarded amount with the learned Tribunal, and taking into account the fact that more than ten years have elapsed since the date of the accident, the learned Tribunal is directed to release the entire balance amount, with accrued interest thereon, in favour of the claimant, within a period of eight weeks from today. However, in case the amount received by the claimant falls short of the amount payable to him under the impugned award, the insurer will pay the differential amount to him within a period of eight weeks.

13. The statutory amount of Rs.25,000/- along with accrued interest be refunded to the appellant in MAC.APP. 15/2018.

(REKHA PALLI)
JUDGE

JANUARY 31, 2023
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