



2023:DHC:7546



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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI***Date of decision: 13.10.2023*+ **MAC.APP. 170/2023****SHIVAM SHARMA**

..... Appellant

Through: Mr. Bijay Kumar, Advocate.

versus

**VIJAY BHARTI AND ORS**

..... Respondents

Through: Ms. Kirti Datt, Advocate.

**CORAM:****HON'BLE MR. JUSTICE NAVIN CHAWLA****NAVIN CHAWLA, J. (ORAL)**

1. This appeal has been filed challenging the Award dated 16.01.2023 (hereinafter referred to as 'Impugned Award') passed by the learned Motor Accident Claims Tribunal, South District, Saket Courts, New Delhi (hereinafter referred to as 'Tribunal') in MACT No. 06 of 2020 titled as *Shivam Sharma v. Vijay Bharty & Others..*

2. It was the case of the claimant/appellant before the learned Tribunal that on 25.07.2019 at about 09:45 AM, the appellant was going from his home to CDR Chowk, when a TATA Magic bearing registration no. DL-2W-3607 (hereinafter referred to as 'offending vehicle'), being driven in a rash and negligent manner, hit the appellant from behind. Due to the impact, the appellant fell down and the front wheel of the offending vehicle

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ran over the left leg of the appellant. As a result, the appellant suffered permanent disability which was assessed as 52% of the left lower limb.

3. The challenge of the appellant to the Impugned Award is on the quantum of compensation awarded by the learned Tribunal.

4. The learned counsel for the appellant submits that in spite of the appellant having suffered 52% permanent disability in relation to the left lower limb, the learned tribunal has awarded only a sum of Rs. 5 Lacs as compensation towards the loss of income. He submits that the learned Tribunal should have taken at least 26% functional disability into account for determining the loss of income.

5. I am unable to find merit in the above submission.

6. As is recorded by the learned Tribunal in its Impugned Award, the appellant even after the injury is continuing to work in the same job and has, in fact, earned increments with his salary increasing from Rs. 45,000/- per month at the time of the accident to Rs. 57,000/- per month at the time of passing the Award. Therefore, because of the injury suffered by the appellant in the accident, there is no functional disability suffered by him.

7. In ***Raj Kumar v. Ajay Kumar*** (2011) 1SCC 343, the Supreme Court has laid down the test for determining the functional disability as under:



*“12. Therefore, the Tribunal has to first decide whether there is any permanent disability and, if so, the extent of such permanent disability. This means that the Tribunal should consider and decide with reference to the evidence:*

*(i) whether the disablement is permanent or temporary;*

*(ii) if the disablement is permanent, whether it is permanent total disablement or permanent partial disablement;*

*(iii) if the disablement percentage is expressed with reference to any specific limb, then the effect of such disablement of the limb on the functioning of the entire body, that is, the permanent disability suffered by the person.*

*If the Tribunal concludes that there is no permanent disability then there is no question of proceeding further and determining the loss of future earning capacity. But if the Tribunal concludes that there is permanent disability then it will proceed to ascertain its extent. After the Tribunal ascertains the actual extent of permanent disability of the claimant based on the medical evidence, it has to determine whether such permanent disability has affected or will affect his earning capacity.*

*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 disability (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 (iii) whether he was 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.*

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*19. We may now summarise the principles discussed above :*

*(i) All injuries (or permanent disabilities arising from injuries), do not result in loss of earning capacity.*

*(ii) The percentage of permanent disability with reference to the whole body of a person, cannot be assumed to be the percentage of loss of earning capacity. To put it differently, the percentage of loss of earning capacity is not the same as the percentage of permanent disability (except in a few cases, where the Tribunal on the basis of evidence, concludes that percentage of loss of earning capacity is the same as percentage of permanent disability).*

*(iii) The doctor who treated an injured-claimant or who examined him subsequently to assess the extent of his permanent disability can give evidence only in regard the extent of permanent disability. The loss of earning capacity is something that will have to be assessed by the Tribunal with reference to the evidence in entirety.*

*(iv) The same permanent disability may result in different percentages of loss of earning capacity in different persons, depending upon the nature of profession, occupation or job, age, education and other factors.”*



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8. Applying the above test to the case at hand, the income of the appellant has, in fact, increased and he is still able to perform the same work as he was doing at the time of the accident. Therefore, the learned Tribunal has rightly assessed the functional disability as nil.

9. However, at the same time, the learned Tribunal has further rightly held that with this disability at a later stage, the appellant will find it difficult to perform certain work. For the said purpose, the learned Tribunal has awarded a lumpsum of Rs.5,00,000/- as compensation, which, in the facts of the present case, I find to be reasonable. Accordingly, the challenge to the Impugned Award on account of the determination of compensation for future loss of income is rejected.

10. The learned counsel for the appellant further submits that the learned Tribunal has erred in awarding only a sum of Rs.1,00,000/- to the claimant towards pain and suffering and enjoyment of life, and Rs.50,000/- towards special diet, conveyance and attendant charges.

11. To appreciate the above challenge, it would be relevant to note the nature of injury suffered by the appellant in the accident. I may herein quote the relevant portion of the Award describing the nature of injury suffered by the appellant, as under:

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“17.

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*Clinical profile:- Injury. The study revealed as Midline transverse fracture of navicular bone seen with lateral extension of the fracture proximally into the talo navicular joint; comminuted fracture of cuboid is seen in proximal, dorsal, lateral and planter part. There is subluxation of calcaneo cuboid joint. Grade-I subluxation of second tarso-metatarsal joint is seen; Comminuted fracture of lateral cuneiform is seen with multiple fracture fragments, few bony fractured chips are seen in intertarsal and tarso metatarsal joints; fracture of planter aspect of intermediate cuneiform is seen; hairline fracture of 4<sup>th</sup> metatarsal besee is seen; chip fracture of substantaculum tali of calcaneum is seen; left ankle joint space is maintained; marked soft tissue swelling and oedema of left foot is seen. The injuries on the person of the petitioner/injured Shivam Sharma been opined to be grievous in nature. Due to the accident, injured has suffered 52% permanent physical impairment in relation to his **LEFT LOWER LIMB.** ”*

12. Looking into the nature of the injuries suffered by the appellant, and taking into consideration his age, which was only 28 years at the time of the accident, in my opinion, the learned Tribunal has been rather stringy in awarding the compensation to the appellant on the above two heads.

13. Accordingly, the compensation on account of loss pain and suffering and enjoyment of life shall stand enhanced to Rs.2,00,000/-; and compensation awarded towards special diet, conveyance and attendant charges is enhanced to Rs. 1,00,000/-.



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14. The enhanced compensation shall carry interest at the rate of 7%, as has been awarded by the learned Tribunal in the Impugned Award.

15. The Respondent No. 3 shall deposit the enhanced compensation with the learned Tribunal within a period of six weeks from today. The same shall be released to the appellant in accordance with the schedule of disbursal as prescribed in the Impugned Award.

16. The appeal is partially allowed in the above terms. There shall be no order as to cost.

**NAVIN CHAWLA, J**

**OCTOBER 13, 2023**

Ms/rp

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