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

Date of Decision: 10.05.2023

+ MAC.APP. 216/2021 & CM APPL. 22583/2021 (stay)
RELIANCE GENERAL INSURANCE COMPANY LTD
..... Appellant
Through: Ms.Perna Mehta, Adv.

versus

FAROOQ KHAN & ANR. Respondents
Through: Mr.Noor Alam, Adv.

+ MAC.APP. 278/2022
FAROOQ KHAN Appellant
Through: Mr.Noor Alam, Adv.
versus

RELIANCE GENERAL INSURANCE CO LTD & ANR. & ORS.
..... Respondents
Through: Ms.Perna Mehta, Adv.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J (ORAL)

1. These two appeals preferred under Section 173 of the Motor Vehicles Act 1988, one filed by the insurer and the other by the claimant, seek to assail the award dated 07.04.2021 passed by the learned Motor Accidents Claim Tribunal (the Tribunal). Vide the impugned award, the learned Tribunal has awarded a sum of Rs.31,55,292/- alongwith interest @6% p.a. as compensation to the claimant.
2. While the insurer by way of appeal being MAC.APP. 216/2021 is

aggrieved by the grant of compensation, the claimant by way of MAC.APP. 278/2022 seeks enhancement of compensation.

3. Before dealing with the rival submissions of the parties, the brief factual matrix, as is necessary for adjudication of the present appeals, may be noted.
4. On 30.04.2013, the claimant aged 46 years, a cook in the Delhi Golf Club, while going on his motorcycle, met with an accident with a Santro car which car was found to be driven rashly and negligently by respondent no.2. As the said car was insured with the appellant in MAC.APP.216/2021, a claim petition came to be filed before the learned Tribunal.
5. The case of the claimant before the learned Tribunal was that on account of grievous injuries suffered by him due to the accident, he had become permanently disabled to the extent of 76.7%, and had therefore become dependent on others for carrying out even his daily activities. He was therefore no longer able to work as a cook or carry out his duties in any other vocation. He therefore claimed compensation on the ground of having become incapacitated from doing any work.
6. In support of his plea that he was suffering from 76.7% disability (rounded off to 77%) as a result of the injuries sustained by him in the accident, the claimant relied on a disability certificate issued by the Lok Nayak Hospital on 21.10.2019, after he was examined by a three-member Board. Before the tribunal, the said disability certificate was proved by Ms. Rita Mehta, a social worker working in the Lok Nayak Hospital, who was examined as PW-5.

7. Even though the insurer cross-examined PW-5, no suggestion was put to her that the disability certificate was fake. The insurer also did not move any application for summoning any of the doctors who had issued the disability certificate. On the other hand, the claimant in order to prove the disability certificate, had moved an application for summoning the doctors who had examined him. They, however, failed to appear before the learned Tribunal, and therefore the disability certificate was proved only by PW-5.
8. It was submitted before the Tribunal that due to the accident, the claimant was not able to perform any work whatsoever and therefore had no means of livelihood. It was claimed that while working as a cook in the Delhi Golf Club, he was drawing a salary of Rs. 25,269/- besides overtime allowance. In support of this plea, the claimant examined PW-3, the Manager (HR) of the Delhi Golf Club, before the learned Tribunal who stated that in March 2013, besides the salary of Rs.25,269/-, the claimant was also paid overtime allowance of Rs.5,059/-. The wife and daughter of the claimant also appeared in the witness box to prove the details of the treatment undergone by the claimant including the details of his hospitalisation. They also stated in no uncertain terms, that as a result of the accident, the claimant was not able to perform any work and had in fact become dependant on others even for his daily activities.
9. By relying on the aforesaid evidence, the learned Tribunal came to the conclusion that, taking into account that he had become incapacitated from carrying on any job, the functional disability of the claimant was required to be taken as 77% and his monthly salary was proved to be

Rs.25,269/-. The learned Tribunal accordingly awarded a sum of Rs.31,55,292/- as compensation to the claimant which included a sum of Rs. 30,35,292 towards the loss of future income by applying the multiplier of 13.

10.The relevant extract of the impugned award reads as under:-

(31) Now coming to the aspect of Income of the petitioner/ injured, the petitioner Farooq Khan claims that he was working as Assistant Cook in Delhi Golf Club and was getting a salary of Rs.28,129/per month at the time of accident. The petitioner has examined Ms. Shailja Laxman (PW3) the HR Manager of Delhi Golf Club who has proved that the petitioner Farooq Khan was working as Cook in Delhi Golf Club. She has also proved that in the month of March 2013 the salary of Farooq Khan was Rs.25,269/and also got the overtime of Rs.5,095/-. She has placed on record the salary statement of the employees from January 2013 to March 2013 which is Ex.PW3/A. In her crossexamination the witness has clarified that in the month of March 2013, the petitioner got the net salary in hand of Rs.16,577/-. I have gone through the above Salary Statement which shows that the total salary of petitioner was Rs.30,364/(basic salary of Rs.25,269/plus Rs.5,095/as Over Time) out of which Rs.3,032/were deducted towards PF, Rs.525/were deducted towards Tax and Rs.5,490/were towards bank deductions and the in hand salary of the petitioner was Rs.21,317/-.

(32) In order to rebut the above claim of the petitioner, the respondents have not examined any witness nor produced any document to the contrary. Therefore, the basic salary of the injured i.e. Rs.25,269/- is taken as his income at the time of accident.

(33) Now coming to the aspect of Disability of the petitioner. Perusal of the record shows that a Disability Report dated 21.10.2019 of the petitioner has been received from Lok Nayak Hospital, New Delhi which is Ex.PW5/1 duly proved by Ms. Rita Mehta (PW5) according to which the Medical Board has opined as under:

“.... Total disability is calculated of Sh. Farooque Khan as follows:

a) Right sided hemeperasis (current modified ranking scale 3 amounting to 60% (Sixty Percent)disability.

b) As per assessment done from IHBAS level of impairment following cognitive impairment results into 50% (Fifty Percent) disability.

Total disability is calculated as $a + b (90a)/90 = 60 + 50 (9060)/90 = 76.7\%$ (round off 77%)

Total disability is 77% (Seventy Seven percent) in relation to whole body, which is permanent in nature....”

(34) No evidence in rebuttal has been led by the respondents and therefore, I hold that the Disability of the petitioner for the purposes of calculating the loss of income shall be taken as 77%.

(35) It has also come on record in the testimony of Ms. Shailja Laxman (PW3) that the petitioner/ injured is on their pay roll but since he is not attending the office, he is not getting any salary. She has specifically deposed that the petitioner is not attending the office from the date of accident i.e. 30.04.2013. In her cross examination she has clarified that the services of the petitioner has not been terminated.

(36) As per the Aadhar Card, the date of birth of the injured/ petitioner Farooq Khan is 14.08.1966 and hence, as on the date of accident i.e. 30.04.2013 the injured was aged 46 years, 8 months and 16 days. Therefore, the Multiplier of 13 is taken for purposes of calculating the loss of income.

(37) In view of the above, the loss of income on account of Disability is calculated as under:

77% of 25,269/=19,457/-

19,457 X 12 X 13 = 30,35,292/-

11. Being aggrieved, both sides have filed their respective appeals.

12. In support of her appeal, Ms. Perna Mehta, learned counsel for the insurer has made two primary submissions. The first and foremost

submission is that the disability certificate on which the learned Tribunal has relied, was proved only by a social worker, working in the Lok Nayak Hospital. She submits that PW-1, the social worker, could not be said to be aware about the circumstances in which the said certificate has been issued. Further, none of the doctors who had issued the disability certificate having appeared to prove the disability certificate, the same ought to have been rejected by the learned Tribunal.

13. She next contends that even if the claimant's permanent disability in accordance with the disability certificate was accepted as 77%, his functional disability could not be treated as 77% by the learned Tribunal. She submits that once the claimant is admittedly not 100% disabled, and is still able to perform some job, his functional disability ought to have been appropriately reduced. By placing reliance on the decision in *Raj Kumar v. Ajay Kumar & Anr.* (2011) 1 SCC 343 wherein the Apex Court held that the percentage of the permanent disability with reference to the whole body cannot be assumed to be the percentage of loss of earning, she contends that the learned Tribunal ought to have independently assessed the disability of the claimant by considering his earning capacity, instead of simply treating his permanent disability as functional disability. She, therefore, prays that the impugned award be set aside and compensation awarded be suitably reduced.

14. Ms. Mehta finally submits that the learned Tribunal was justified in not awarding any compensation towards loss of future prospects to the claimant, as he was not working in a permanent job. She submits that

even if the claimant is held entitled to receive some amount towards loss of future prospects, the same ought to be granted taking into account that he was working on a fixed salary in the Delhi Golf Club and not in any government organization. By drawing my attention to para 59.4 of the decision in *National Insurance Co. Ltd. vs. Pranay Sethi (2017) 16 SCC 680*, she contends that loss of future prospects, if any, ought to be granted to the claimant only at 25% and not at 30% as claimed by him

15. *Per contra*, Mr. Noor Alam, learned counsel for the claimant, while defending the impugned award in so far as it relates to the finding qua the claimant's functional disability, seeks enhancement of compensation on two grounds. The first and foremost being that the learned Tribunal erred in computing the loss of his earning capacity as only 77% instead of 100%. He submits that as a result of the accident, the claimant suffered grievous injuries resulting in restrictions of movement and rendering him unable to perform any job. The claimant, who was working as a cook at the time of the accident is, on account of his 77% functional disability, unable to carry out any vocation and has infact become dependent on others even for his basic daily activities. His loss of earning capacity is therefore 100%, which the learned Tribunal failed to appreciate. He, therefore, prays for compensation awarded towards 'loss of future income' to be suitably enhanced by treating loss in his earning capacity as 100%.

16. Mr. Alam next submits that the learned Tribunal also erred in not granting any compensation towards 'loss of future prospects' to the claimant. By placing reliance on the decision of the Apex Court in

Pranay Sethi (Supra) he submits that as the claimant was about 46 years of age and working on a permanent job in the Delhi Golf Club, an enhancement of 30% was required to be made in the claimant's income as compensation towards loss of his future prospects.

17. Having considered the submissions of learned counsel for the parties and perused the impugned award, while I find absolutely no merit in the appeal of the insurer, I am inclined to accept the claimant's appeal. As noted hereinabove, only two grounds have been urged by the insurer; the first being that the disability certificate, having not been proved by the issuing doctors, ought not to have been accepted by the learned Tribunal. The second being that the permanent disability of the claimant could not have been accepted as his functional disability.

18. In so far as the appellant's first plea that the disability certificate having not been proved by the issuing doctor ought to have been rejected, I am of the considered view that once the disability certificate was duly proved by a social worker working in the very same hospital from where it was issued, the learned Tribunal was fully justified in accepting the same. Even otherwise, this Court cannot lose sight of the fact that the said certificate was issued by a renowned government hospital in Delhi and therefore, in case the insurer, in any manner, doubted the authenticity of the said certificate, it was on the insurer to lead evidence to the contrary. In fact, even during the cross examination, the insurer did not put any question to the social worker from the hospital to allege that the disability certificate was fake. I, therefore, find no reason to accept the insurer's

plea that the disability certificate duly proved by PW-5 ought not to have been relied upon by the tribunal.

19. Now coming to the insurer's second plea that the functional disability of the claimant ought not to have been accepted as being the same as his permanent disability. Even though this plea appears to be attractive at the first blush, a closer scrutiny of the facts of this case show that the learned Tribunal has given due consideration to the condition of the claimant and has only then arrived at a conclusion that his functional disability was also required to be considered as 77%. The learned Tribunal also noted that not only had the claimant become unfit for carrying out his existing job of a cook but had also become dependent on his family members even for his daily activities.

20. I have also perused the decision in **Raj Kumar (supra)**, relied upon by the learned counsel for the insurer but find that the same, instead of forwarding the case of the insurer, supports the claimant's plea for enhancement. In **Raj Kumar (supra)**, the Apex Court has only emphasised that the disability certificate should neither be mechanically accepted, nor should the percentage of permanent disability be mechanically accepted as being the same as functional disability. In the present case, the learned Tribunal has after taking into account that the claimant, who was working as a cook at the time of the accident, was now not able to do anything for a living on account of his disability. Infact, the learned Tribunal categorically observed that the claimant who was working as a cook had been disabled to such an extent that he was not in a position to carry out his

erstwhile job. I am therefore of the view that the findings of the learned Tribunal in this regard cannot be faulted.

21. Now coming to the claimant's appeal; it has been urged that once the claimant is not able to discharge any duties whatsoever, he was definitely entitled to receive compensation towards 'loss of earning' by treating the loss in his income as 100%. In my view, once the learned Tribunal itself observed that the claimant was not able to discharge any duty and had become dependent on his family members for even carrying out his daily activities, the learned Tribunal's direction to restrict the claimant's 'loss of earning' to only 77% of his income is evidently faulty. The compensation payable to the claimant towards loss of future income is accordingly liable to be increased by taking into account 100% of his monthly income of Rs. 25,269/- and applying a multiplier of 13 thereon. The said amount will therefore now stand enhanced to Rs. 39,41,964/- (Rs.25,269 X 12 X 13 = Rs.39,41,964/-)

22. Now coming to the claimant's plea for grant of compensation towards loss of future prospects. I may note that learned counsel for the insurer has not seriously opposed the claimant's prayer for grant of enhancement towards loss of future prospects. Her only prayer being that the said enhancement is required to be computed at 25% of his income as against the claimant's prayer for enhancement of 30%. Taking into account that the claimant was holding a permanent job in the Delhi Golf Club for the last many years where he had been receiving periodical increases, it cannot be said that he was working on a fixed salary job. On the other hand, it is clear that he held a

permanent job. I am therefore of the view that the claimant's case would be squarely covered by para 59.3 of the decision in ***Pranay Sethi (supra)*** and not by para 59.4. The claimant was admittedly 46 years of age at the time of the accident and therefore, in accordance with para 59.3 of the decision in ***Pranay Sethi (supra)*** and the decision of the Apex Court in ***Civil Appeal 5123/2019*** titled ***Parminder Singh vs. New India Insurance Co. Ltd., Parminder (supra)***, he would be entitled to an enhancement of 30% towards loss of future prospects.

23. For the aforesaid reasons, the compensation payable to the claimant will stand enhanced from Rs. 31,55,292/- to Rs. 52,44,553/- under the following heads:

S.No	Heads	Compensation awarded by the Tribunal	Compensation by this Court
1.	Income of the deceased	Rs.25,269/-	Rs.25,269/-
2.	Loss of Future Income	Rs.30,35,292/- (Rs.25,269/- X 77% X 12 X 13)	Rs. 39,41,964/- (Rs.25,269/- X 100% X 12 X 13)
3.	Loss of Future Prospect	-	Rs. 11,82,589/- (Rs. 25,269/- X 30% X 12 X 13)
4.	Special Diet	Rs.10,000/-	Rs.10,000/-
5.	Conveyance	Rs.10,000/-	Rs.10,000/-
6.	Mental and Physical shock	Rs. 50,000/-	Rs. 50,000/-
7.	Pain and Suffering	Rs. 50,000/-	Rs. 50,000/-
	Total Compensation	Rs. 31,55,292/-	Rs. 52,44,553/-

24. Accordingly, while the appeal of the insurer, being MAC APP 216/2021 is dismissed, the claimant's appeal being MAC APP 278/2022 is allowed by directing that claimant will be entitled to receive a compensation of Rs. 52,44,553/-, which amount will be payable with interest @6% p.a. as directed by the learned Tribunal.

(REKHA PALLI)
JUDGE

MAY 10, 2023

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