



2023:DHC: 8751



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

Date of decision: 06.12.2023

+ **MAC.APP. 527/2023 & CM APPL. 61435/2023**

THE ORIENTAL INSURANCE CO LTD Appellant
Through: Mr.A.K. Soni, Adv. (through
VC)

versus

SH LALIT YADAV & ORS. Respondents
Through: Mr.Varun Sarin and Ms.Parul
Dutta, Advs. for R-1.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

1. With the consent of the learned counsels of the parties, the present appeal has been heard and disposed of by this judgment at the admission stage itself.

2. This appeal has been filed challenging the Award dated 18.09.2023 (hereinafter referred to as 'Impugned Award') passed by the learned Motor Accident Claims Tribunal, New Delhi District, Patiala House Courts, New Delhi (hereinafter referred to as 'Tribunal') in DAR No. 45/2019, titled ***Sh.Lalit Yadav v. Sh.Raj Kumar & Ors..***

3. In the Detailed Accident Report (in short, 'DAR'), on basis whereof the above Claim Petition was registered, it was

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reported that on 21.08.2018 at about 9.20 AM, the respondent no.1 herein was going on his duty from his residence at Jhareda Village, Delhi Cantt. to Dhaula Kuan, New Delhi. As he reached near Subroto Park, GGR & PDR, Red Light, all of a sudden, the Offending Vehicle, that is, a bus bearing registration No. HR-45B-4409, which was being driven by the respondent no.2 herein in a rash and negligent manner and at a very high speed, came and hit the respondent no.1 from the back side with great force due to which the respondent no.1 fell down on the road and the tyre of the bus ran over his right leg. He was rushed to the AIIMS Trauma Centre, New Delhi for treatment. In the course of the treatment, he had to undergo right leg above knee amputation.

4. The learned Tribunal, on the basis of the evidence led before it, has held that the accident had taken place due to the rash and negligent driving of the Offending Vehicle by the respondent no.2.

5. As far as compensation is concerned, the learned Tribunal while awarding the loss of future earnings in favour of the respondent no.1, has assessed the functional disability suffered by him towards the whole body as 100%. It is with this part of the Impugned Award that the appellant is aggrieved of.

6. The learned counsel for the appellant submits that Dr.Sanjay Meena, Associate Professor, Orthopedics, Dr. RML Hospital, New Delhi was examined as PW2. He proved the Disability Certificate of the respondent no.1 as Ex.PW1/8. The

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Disability Certificate had assessed the permanent physical disability of the respondent no.1 as 80% in relation to the right lower limb. The PW2 further stated that the respondent no.1 can perform sitting work properly.

7. The learned counsel for the appellant submits that as per the case of the respondent no.1, he was engaged in the preparation of food as COMMI II (Bhatura) at a commercial kitchen of M/s Haldiram Marketing (P) Ltd. He submits that keeping in view the injury/disability suffered by the respondent no.1 and the nature of the job of the respondent no.1, the learned Tribunal has erred in assessing the functional disability of the respondent no.1 as 100% to the whole body. He submits that the job of the respondent no.1 can be performed while sitting and, therefore, the functional disability suffered by him would be quite low.

8. On the other hand, the learned counsel for the respondent no.1 submits that the respondent no.1 could not continue with the job due to the injuries suffered by him in the accident. He submits that the respondent no.1 was working in a commercial kitchen and the same required moving around in the kitchen. The job could not be performed in a sitting position. He submits that, therefore, the learned Tribunal has rightly assessed the functional disability of the respondent no.1 as 100%.

9. I have considered the submissions made by the learned counsels for the parties.

10. In the present case, the respondent no.1, as noted



hereinabove, was engaged in the preparation of food as COMMI II (Bhatura) at a commercial kitchen of M/s Haldiram Marketing (P) Ltd.. He is stated to have lost his job because of the injuries suffered by him in the accident in question. At the same time, PW2, in his statement, has stated that the respondent no.1 can still perform sitting work properly. Though the respondent no.1 may not be, therefore, able to work in a commercial kitchen, it is not a case where he shall be totally denuded of the capacity to work and earn a living only because of his injuries suffered by him in the accident.

11. In **Raj Kumar v. Ajay Kumar & Anr.** (2011) 1 SCC 343, the Supreme Court has explained the principles for assessing the loss of future earnings due to permanent disability, as under:

“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.

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 per cent, 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 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 be 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.

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16. The Tribunal should not be a silent spectator when medical evidence is tendered in regard to the injuries and their effect, in particular, the extent of permanent disability. Sections 168 and 169 of the Act make it evident that the Tribunal does not function as a neutral umpire as in a civil suit, but as an active explorer and seeker of truth who is



required to “hold an enquiry into the claim” for determining the “just compensation”. The Tribunal should therefore take an active role to ascertain the true and correct position so that it can assess the “just compensation”. While dealing with personal injury cases, the Tribunal should preferably equip itself with a medical dictionary and a handbook for evaluation of permanent physical impairment (for example, Manual for Evaluation of Permanent Physical Impairment for Orthopaedic Surgeons, prepared by American Academy of Orthopaedic Surgeons or its Indian equivalent or other authorised texts) for understanding the medical evidence and assessing the physical and functional disability. The Tribunal may also keep in view the First Schedule to the Workmen's Compensation Act, 1923 which gives some indication about the extent of permanent disability in different types of injuries, in the case of workmen.

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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 the percentage of loss of earning capacity is the same as the 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 to 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."

12. Keeping in view the above principles, in my view, the learned Tribunal has erred in assessing the functional disability of the respondent no.1 as 100%. Though the respondent no.1 would certainly face inconvenience and difficulty now in continuing with the nature of the work that he was doing, especially, at the scale of a commercial kitchen, at the same time, with the provision of an artificial limb, which also has been provisioned in the Impugned Award, he shall certainly be able to make a living for himself, though not at the same level. Accordingly, the functional disability of the respondent no.1 towards his whole body is assessed as 80%.

13. The compensation amount awarded in favour of the respondent no.1 under the head of loss of future earnings due to the disability shall stand accordingly reduced as under:

$$Rs. 18,746/- \times 12 \times 80/100 \times 16 \times 140/100 = \textbf{Rs.40,31,139.84/-}$$

14. The learned counsel for the appellant further challenges the Impugned Award on the ground that the learned Tribunal has erred in awarding interest on the compensation amount awarded in favour of the respondent no.1 under the head of



future treatment quantified at Rs.20,00,000/-. He submits that as these expenses would be incurred in future, the learned Tribunal should not have awarded interest on this component of compensation.

15. I find no merit in the said submission.

16. This Court in ***IFFCO Tokio General Insurance Company Ltd v. Jogender & Ors.*** Neutral Citation No. 2023:DHC:6897, has rejected a similar challenge to an Award by observing as under:

“29. I am unable to agree with the submission made. It must be remembered that the compensation awarded to the claimant is on basis of estimation and on the prices that were prevalent around the time of the accident. The same would not remain static for all times to come and specifically for the entire lifetime of the claimant, which has been taken into account while awarding the compensation towards prosthetic limb. The escalation of prices has not been taken into account. The same would get balanced only if the Court also awards interests on the compensation amount for the pendente lite period.

30. The Supreme Court in Mohd. Sabeer @ Shabir Hussain (Supra), while enhancing the compensation payable to the claimant, including the enhanced amount for artificial limb and its maintenance, also awarded interest on the enhanced compensation from the date of the filing the application.”

17. No other challenge to the Award has been raised by the appellant.

18. The appellant shall deposit the re-assessed compensation along with interest at the rate of 7.5% from the date of the filing



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of DAR till the date of deposit with the learned Tribunal within a period of four weeks from today. The amount so deposited shall be released in favour of the respondent no.1 in accordance with the schedule of the disbursal prescribed by the learned Tribunal in the Impugned Award.

19. The appellant shall stand exempted from depositing the statutory amount.

20. The appeal along with the pending application is disposed of in the above terms.

21. There shall be no order as to costs.

NAVIN CHAWLA, J

DECEMBER 6, 2023/ns/AS

Click here to check corrigendum, if any

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