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

Date of decision: 13.07.2023

+ MAC.APP. 1056/2016
NATIONAL INSURANCE CO LTD Appellant
Through: Mr.Manu Luv Shahalia,Adv.

versus

CHITRA & ORS Respondents
Through: Mr.M.K.Singh & Mr.Surjeet
Singh, Advs. for R-1.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

1. This appeal has been filed challenging the Award dated 28.09.2016 (hereinafter referred to as the 'Impugned Award') passed by the learned Motor Accidents Claims Tribunal, North East, Karkardoom, Delhi (hereinafter referred to as the 'Tribunal') in MACT Case No.402/2010, titled ***Chitra v. Mufid Khan & Ors.***

2. The respondent no.1 herein had filed the above Claim Petition stating that on 31.10.2010, at about 9:25 p.m., she along with her husband, namely Dharmender, and daughter, namely Dristi, were returning back from the house of their relative in a two wheeler scooter bearing no. DL 6ST 7734. The scooter was hit from behind by a truck bearing no. HR 55H 5499. As a result of the accident, the respondent no.1 suffered grievous injuries and same was assessed as

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60% disability with respect to the right lower limb. She, in fact, suffered amputation of right leg below knee.

3. On the above fact, the learned Tribunal vide the Impugned Award found that the respondent no.1 herein had sustained injuries in the accident due to the rash and negligent driving of the driver of the Offending Vehicle, that is, the truck. On the quantum of the compensation payable to the respondent no.1, the learned Tribunal found that the respondent no.1 has not been able to prove that she was earning member of the family. The learned Tribunal, therefore, awarded the compensation taking the Minimum Wages of a graduate in order to calculate the loss of income. As far as the age of the respondent no. 1 is concerned, it is not disputed that the respondent no.1 was 26 years old at the time of accident. On the question of disability, the learned Tribunal considered 60% of the disability to the whole body for the purpose of calculation of the future loss of income/gratuitous services. It is challenging this head of compensation that the present appeal has been filed.

4. The learned counsel for the appellant submits that as 60% of the disability was opined only for the right lower limb, it could not have been taken at the same percentage for the whole body. He further submits that by the Impugned Award, the learned Tribunal has also awarded a sum of Rs.8 Lakh to the respondent no.1 towards the cost of implantation of an artificial limb. He submits that once this amount is awarded, in any case, the compensation could not have been awarded taking the disability of the respondent no.1 as 60% to the



whole body.

5. I find no merit in the submission made by the learned counsel for the appellant. As has been found by the learned Tribunal and not disputed, the respondent no.1 was a home maker and has suffered amputation of the right leg below knee. For a home maker, therefore, such injury would have grave consequences, especially keeping in view the strata to which the respondent no.1 belongs. It would certainly impair her house work and therefore, no fault can be found in the Impugned Award where it considers her disability as 60% to the whole body.

6. In ***Arun Kumar Agrawal v. National Insurance Co. Ltd.***, (2010) 9 SCC 218, the Supreme Court has observed thus:

“62. The alternative to imputing money values is to measure the time taken to produce these services and compare these with the time that is taken to produce goods and services which are commercially viable. One has to admit that in the long run, the services rendered by women in the household sustain a supply of labour to the economy and keep human societies going by weaving the social fabric and keeping it in good repair. If we take these services for granted and do not attach any value to this, this may escalate the unforeseen costs in terms of deterioration of both human capabilities and social fabric.

63. Household work performed by women throughout India is more than US \$ 612.8 billion per year (Evangelical Social Action Forum and Health Bridge, page 17). We often forget that the time spent by women in doing household work as homemakers is the time which they can devote to paid work or to their education. This lack of sensitiveness and



recognition of their work mainly contributes to women's high rate of poverty and their consequential oppression in society, as well as various physical, social and psychological problems. The courts and tribunals should do well to factor these considerations in assessing compensation for housewives who are victims of road accident and quantifying the amount in the name of fixing 'just compensation'."

7. In **Jitendra Khimshankar Trivedi v. Kasam Daud Kumbhar**, (2015) 4 SCC 237, the Supreme Court has observed that :

"10. Even assuming Jayvantiben Jitendra Trivedi was not self-employed doing embroidery and tailoring work, the fact remains that she was a housewife and a homemaker. It is hard to monetise the domestic work done by a house-mother. The services of the mother/wife is available 24 hours and her duties are never fixed. Courts have recognised the contribution made by the wife to the house is invaluable and that it cannot be computed in terms of money. A housewife/homemaker does not work by the clock and she is in constant attendance of the family throughout and such services rendered by the homemaker has to be necessarily kept in view while calculating the loss of dependency. Thus even otherwise, taking deceased Jayvantiben Jitendra Trivedi as the homemaker, it is reasonable to fix her income at Rs 3000 per month."

8. In **Raj Kumar v. Ajay Kumar**, (2011) 1 SCC 343, the Supreme Court laid down the following principles applicable to determine the compensation payable in cases of permanent disability:

"9. The percentage of permanent disability is expressed by the doctors with reference to the whole body, or more often than not, with reference to a particular limb. When a disability certificate states that the injured has



suffered permanent disability to an extent of 45% of the left lower limb, it is not the same as 45% permanent disability with reference to the whole body. The extent of disability of a limb (or part of the body) expressed in terms of a percentage of the total functions of that limb, obviously cannot be assumed to be the extent of disability of the whole body. If there is 60% permanent disability of the right hand and 80% permanent disability of left leg, it does not mean that the extent of permanent disability with reference to the whole body is 140% (that is 80% plus 60%). If different parts of the body have suffered different percentages of disabilities, the sum total thereof expressed in terms of the permanent disability with reference to the whole body cannot obviously exceed 100%.

10. *Where the claimant suffers a permanent disability as a result of injuries, the assessment of compensation under the head of loss of future earnings would depend upon the effect and impact of such permanent disability on his earning capacity. The Tribunal should not mechanically apply the percentage of permanent disability as the percentage of economic loss or loss of earning capacity. In most of the cases, the percentage of economic loss, that is, the percentage of loss of earning capacity, arising from a permanent disability will be different from the percentage of permanent disability. Some Tribunals wrongly assume that in all cases, a particular extent (percentage) of permanent disability would result in a corresponding loss of earning capacity, and consequently, if the evidence produced show 45% as the permanent disability, will hold that there is 45% loss of future earning capacity. In most of the cases, equating the extent (percentage) of loss of earning capacity to the extent (percentage) of permanent disability will result in award of either too low or too high a compensation.*



11. What requires to be assessed by the Tribunal is the effect of the permanent 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 the 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 : (2010) 3 SCC (Cri) 1258 : (2010) 10 Scale 298] and Yadava Kumar v. National Insurance Co. Ltd. [(2010) 10 SCC 341 : (2010) 3 SCC (Cri) 1285 : (2010) 8 Scale 567])

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.*

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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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.”

9. Recently, in ***Sidaram v. Divisional Manager, United India Insurance Co. Ltd.***, (2023) 3 SCC 439, the Supreme Court reemphasized that *“what is to be seen as emphasised by decision after decision, is the impact of the injury upon the income generating capacity of the victim. The loss of a limb (a leg or arm) and its severity on that account is to be judged in relation to the profession, vocation or business of the victim; there cannot be a blind arithmetic formula for ready application.”*

10. Applying the above principles to the facts of the present case, only because the respondent no. 1 was a homemaker, her contribution to the household cannot be undermined. She contributed in her own ways to the household. As a homemaker she would be expected to do physical housework, apart from giving emotional and other support to the family members. Amputation of her leg would severely hamper her ability to perform the hard physical work that she would have been performing otherwise. Merely because the respondent no.1 has been awarded a sum for implantation of an artificial limb, in my opinion, can be no ground to reduce the functional disability. With artificial



limb also, the respondent no.1 would not be able to properly perform the functions of a homemaker, especially keeping in view the strata of the society to which the respondent no.1 belongs to, where all house work is expected to be done by her physically. The disability suffered by her would definitely hamper her ability to perform such functions. The respondent no.1, in her application, being CM Appl. No.7812/2023, has filed her medical documents/prescription dated 14.02.2023 from NKS Super Specialty Hospital, which advises change of prosthesis. Clearly, the respondent no.1 is suffering from the effect of the accident till date.

11. I, therefore, find no merits in the present appeal. The same is accordingly dismissed.

12. The statutory amount deposited by the appellant with the Registry of this Court be released in favour of the respondent no.1 along with interest accrued therein.

NAVIN CHAWLA, J

JULY 13, 2023/Arya/ss

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