2023:DHC:6613

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

Date of decision: 11.09.2023

\+ **MAC.APP. 887/2017**

UNITED INDIA INS CO LTD ..... Appellant
Through: Mr.Pankaj Seth, Adv.

versus

ROHTASH & ORS ..... Respondents
Through: Mr.Prashant Borkar, Adv.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (*ORAL*)

1. This appeal has been filed challenging the Award dated 25.07.2017 (hereinafter referred to as the 'Impugned Award') passed by the learned Motor Accidents Claims Tribunal, (Shahdara-District), Karkardooma Courts, Delhi (hereinafter referred to as the 'Tribunal') in New MAC No.1262/2016, titled ***Rohtash v. Vinod Kumr & Ors..***

2. It was the claim of the Claimant/respondent no.1 herein that on 26.11.2022 at about 10.30 p.m., he was riding his motorcycle bearing registration no.DL-7SBK-3936. When he reached near Mother Dairy, 64 Foota Road, Delhi, one Delhi Transport Corporation bus bearing registration no.DL-lPC-8362 of route no.33 came from behind at a high speed being driven in a rash and negligent manner and hit the motorcycle of the respondent no.1, as a result of which, the respondent no.1 had fallen down and rear wheel of the bus ran over his right hand. Due to the injuries suffered, the respondent no.1 had to undergo the amputation of his right upper limb above elbow. His disability was

assessed as 89% permanent loco-motor disability in relation to right upper limb following traumatic above elbow amputation.

3. The learned Tribunal by its Impugned Award found that the accident had taken place due to the rash and negligent driving of the bus. On the compensation, the learned Tribunal has awarded the following in favour of the respondent no.1:-

1.	Compensation towards pain and sufferings	Rs. 1,50,000/-
2.	Compensation towards medical bills	Rs. 2,927/-
3.	Loss of earning capacity due to disability	Rs. 30,71,822/-
4.	Loss of earning for a period of 6 months	Rs. 1,15,050/-
5.	Attendant charges for 4 months	Rs. 14,000/-
6.	Special diet and conveyance	Rs. 35,000/-
7.	Compensation towards loss of amenities and enjoyment of life	Rs. 1,25,000/-
8.	Compensation towards disfigurement	Rs. 1,25,000/-
9.	Compensation on account of artificial limb	Rs.18,43,512/-
10	Compensation on account of maintenance of artificial limb	Rs. 60,000/-
	TOTAL	**Rs.55,42,311/-**

Functional Disability

4. The appellant challenges the Impugned Award contending that the learned Tribunal has erred in taking the functional disability of the respondent no.1 as 89%. It is contended by the appellant that as the permanent disability suffered by the respondent no.1 is 89% in relation only to the right upper limb, his functional disability should have been taken at a lesser value.

5. I am unable to agree with the above challenge of the appellant.

6. The learned Tribunal in assessing the functional disability of the respondent no.1 has placed reliance on the judgment of the Supreme Court in ***Raj Kumar vs Ajay Kumar*** (2011) 1 SCC 343, and applying the principles laid down therein, has found that as the respondent no.1 was doing the business of a mobile food stall, he would be unable to run the same with one hand; he would also not be able to drive the vehicle; or do the other work, which he could have done prior to the accident in question. In these circumstances, the learned Tribunal has assessed the functional disability suffered by the respondent no.1 in relation to the entire body as 89%.

7. I see no reason to disagree with the said assessment.

8. The challenge of the appellant to the Impugned Award on this account is, therefore, rejected.

Income

9. The next challenge of the appellant to the Impugned Award is on the income of the respondent no.1 assessed by the learned Tribunal. The learned counsel for the appellant could not state any reason for such challenge.

10. For assessing the income of the respondent no.1, the learned Tribunal has placed reliance on the statement of Sh.Vinod Kumar, Sr. Tax Assistant, Ward 34(1) (PW-2), who had proved on record, as EX.PW2/2, the certified true copy of the Income Tax Return for the Assessment Years 2012-13, which showed the Gross Income of the respondent no.1 as Rs.2,75,500/- and Net Taxable Income of Rs.1,75,500/-. The learned Tribunal deducted the tax payable on the above amount of Rs.115/-, and assessed the income of the respondent

no.1 as Rs.2,30,099/-.

11. I find no fault in such assessment.

12. The challenge of the appellant on this account is also rejected.

Compensation towards Loss of Artificial Limb

13. The last challenge of the appellant to the Impugned Award is on the compensation of Rs.18,43,512/- awarded to the respondent no.1 towards cost of the artificial limb, and Rs.60,000/- towards maintenance thereof. The appellant challenges the same to be exorbitant.

14. I again find no merit in such challenge of the appellant. The learned Tribunal has placed reliance on the testimony of Mr.Rajiv, Clinical Prosthetist and Orthotist, Otto Bock Health Care India Ltd (PW-3), who stated that the estimated cost of the artificial limb would be Rs.18,43,512/-, and the limb would last for about four years. The annual maintenance cost would be Rs.15,000/- to Rs.20,000/-. Based on this testimony, the learned Tribunal has awarded the cost of prosthetic limb and the maintenance thereof in favour of the respondent no.1. I see no reason to disagree with the same.

Conclusion:

15. Accordingly, I find no merit in the present appeal. The same is dismissed.

16. The statutory amount deposited by the appellant in the Registry of this Court, along with interest accrued thereon, shall be released in favour of the respondent no.1 towards cost of the present appeal.

NAVIN CHAWLA, J

SEPTEMBER 11, 2023/Arya/ss