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

% Reserved on : 06th November, 2023
Pronounced on : 23rd November, 2023

**+ MAC.APP. 708/2015**

JAYAVEER SINGH @ JAYAVIR SINGH ..... Appellant
Through: Mr. Manish Maini, Ms. Yashika Miglani and Mr. Vibhor Jain, Advocates.

versus

JITENDER & ORS ..... Respondent
Through: Mr. A.K. Soni, Advocate for respondent No.1.

**CORAM:**
**HON'BLE MR. JUSTICE ANISH DAYAL**

**JUDGEMENT**

**ANISH DAYAL, J.**

1. This appeal has been preferred against the impugned judgment by MACT, Delhi dated 16th September, 2014, in Suit No. 176/2013. The Ld. Tribunal awarded a sum of Rs. 14, 07,127/- to the claimant.

2. Brief facts are that on 11th August 2013, Sh. Jayveer Singh and Sh. Rizwan were standing near the *rehri* of Sh. Jayveer and suddenly a car bearing No. UP 14DT 4402 driven by respondent No.1 hit the appellant. It was alleged that the said car was being driven rashly, negligently and at high speed. Both the persons fell and suffered injuries. Two separate petitions were filed claiming compensation viz, M.A.C. Petition No. 176/2013 by Jayveer Singh (the appellant in this matter) and DAR No. 379/2013 (by Sh. Rizwan). The appellant/claimant stated that he had suffered guillotine amputation, fracture on both bones of right leg, injury over ankle, head injury besides other injuries. It was stated that he was 47 years of age and was a fruit vendor and was earning Rs. 12,000/- per month.

Other claims were also made relating to his treatment, cost of conveyance, expenses for special diet and of an attendant.

3. On the basis of the pleadings, the following issues were framed:

*1. Whether the petitioner suffered injuries in the accident occurred on 11.08.2013 due to rash and negligent driving of vehicle no. UP-14DT-4402 being driven by respondent No. 1? (OPP)*

*2. Whether the petitioner is entitled for any compensation, if so, to what amount and from whom? (OPP)*

*3. Relief.*

4. Both the cases of the appellant herein and Sh. Rizwan were consolidated for recording common evidence. However, references made in this judgment relate only to the appellant *herein*.

5. Issue No.1 was decided in favour of the appellant, considering the evidence of appellant (PW-1) and the doctor (PW-2) as well as the FIR, MLC, Site Plan, and Mechanical Inspection Report. As per the Ld. MACT, there was nothing on record to dispel the influence that injuries had been sustained by them in a road accident on that day because of the negligence of the driver of the said vehicle.

6. As regards issue No.2, appellant's evidence of PW-1 was noted where he stated that he was admitted in GTB hospital 11th August, 2013, discharged on 18th August, 2013, and had incurred Rs. 1 lac. He further stated that was a fruit vendor, earning Rs. 12,000/- per month, and incurred Rs. 50,000/- on conveyance. Rs. 15,000/- on special diet and Rs. 4,000/- on an attendant. The appellant produced the discharge summary, medical papers, bills, copy of the ration card, detailed accident report and disability certificate.

7. Dr. R. Mukund, Sr. Resident, Department of Orthopaedics, GTB, Hospital, Delhi was examined as PW-2. He stated that he was a member of the disability board and the disability certificate, Ex. PW-1/5 was issued from their hospital.

As per him, the appellant suffered 82% permanent disability in relation to both lower limbs below the knee in the accident and was operated on 13th August, 2013. As per PW-2, it was the case of amputation of left lower limb below knee, both bone fractures of right lower limb, fracture of calcaneum and cuboid on right foot. The patient could walk without the help of crutches but, to do so, would need artificial limb for the left leg. Further, an injury on calcaneum would restrict the movement of the right ankle. PW-2 stated that the appellant had suffered permanent disability and there was no likelihood of improvement in his condition.

8. In deciding the issue of compensation, Ld. MACT assessed the evidence, facts and circumstances as under:

i. As regards the earning of the appellant, it is stated that there was no material on record to show the avocation and earning of the petitioner as a fruit vendor and therefore used the benchmark of minimum wages of unskilled workmen, as prevailing in NCT of Delhi, which was Rs. 7,725/- (approx.) per month.

ii. To this estimated income, 30% was added towards future prospects and the total was computed as Rs. 10,042/- per month.

iii. After noting that the appellant has suffered disability of 82% and that as a fruit seller it would affect his work even after fixing of prosthetic leg, the functional disability was taken as 45%.

iv. The age of the appellant which had been stated by him to be 47 years was taken into account, despite 45 years being recorded in MLC and other medical records.

v. Multiplier of 13 was taken for the age group that the appellant was in.

9. Accordingly, the total loss was computed to Rs. 7,04,948/- (Rs. 10,042/- x12x13x0.45.)

10. Besides other elements of compensation, Rs. 1.5 lacs were added for the possibility of requiring a prosthetic leg. Therefore, the total compensation was computed as under:

| | | |
|---|---|---|
| i. | Compensation towards pain and sufferings | Rs. 1,50,000/- |
| ii. | Loss of amenities and enjoyment | Rs. 1,50,000/- |
| iii. | Compensation towards disfiguration | Rs. 1,50,000/- |
| iv. | Loss of future earnings due to injuries | Rs. 7,04,948/- |
| v. | Loss of earning of petitioner for six months @ Rs. 7,715/- per month | Rs. 46,350/- |
| vi | Expenses towards medical bills | Rs. 15,379/- |
| vii | Compensation towards conveyance and special diet (without bills) | Rs. 25,000/- |
| viii | Compensation towards attendant charges for two months @ Rs. 7,725/- per month. | Rs. 15,450/- |
| xi | Compensation towards prosthetic leg | Rs. 1,50,000/- |

11. Learned counsel for the appellant assailed the impugned award on the following grounds:

i. Income of the appellant was wrongly assessed and estimated at the benchmark of minimum wages for an unskilled workman. The appellant had specifically stated in his affidavit and claimed that he was earning Rs. 12,000/- per month and considering that it was an un-organised sector, there could not be any proof of the same. For this learned counsel has relied upon ***Sayed Sadiq & Ors v. United India*** (2014) 2 SCC 735, where the Hon'ble Supreme Court in Para 9 noted that *"we are inclined to believe that a vegetable vendor is* *reasonably capable of earning Rs. 6,500/- per month"*. Considering that the incident in ***Sayed Sadiq*** was of 2008, using that as a benchmark, appellant's counsel contended that in 2013 when the appellant was injured, the estimated figures of a vegetable/fruit vendors income would be much higher than what was assessed by the MACT.

ii. The assessment by the Ld. MACT of functional disability at 45%, despite the permanent disability as certified by the medical board being 82%, was without any reasoning and no justification was provided. For this, learned counsel relied upon the judgment of Hon'ble Supreme Court in ***Sayed Sadiq*** *(supra),* where as per the facts of the case, the claimant had sustained injuries to the lower and of the right femur and his right leg was amputated. As per the medical certification, he had suffered disability of 24% to the upper limb and 85% to the lower limb and the High Court had determined the disability as 65% without assigning the reason. The Hon'ble Supreme Court in para 7 of the reported judgment has, however, determined the disability at 85% and gave the following reason:

> *"7... Further, the appellant claims that he was working as a vegetable vendor. It is true that a vegetable vendor might not require mobility to the extent that he sells vegetables at one place. However, the occupation of vegetable vending is not confined to selling vegetables from a particular location. It rather involves procuring vegetables from the wholesale market or the farmers and then selling it off in the retail market. This often involves selling vegetables in the cart which requires 100% mobility. But even by conservative approach, if we presume that the vegetable vending by the appellant claimant involved selling vegetables from one place, the claimant would require assistance with his mobility in bringing vegetables to the marketplace which otherwise would be extremely difficult for him with an amputated*

> *leg. We are required to be sensitive while dealing with manual labour cases where loss of limb is often equivalent to loss of livelihood. Yet, considering that the appellant claimant is still capable to fend for his livelihood once he is brought in the marketplace, we determine the disability at 85% to determine the loss of income."*

iii. The age as per the Aadhar Card was 43 years while the award was awarded on the basis of 47 years, and therefore, the multiplier should be 14 instead of 13.

iv. The expenses for prosthetic leg should include replacement and maintenance as well, considering that the prosthetic leg has a short life and has to be replaced and maintained.

12. In response, the Learned Counsel for the Respondent contended the following:

i. There was no proof on the record as to the earning capacity of the appellant, and that there is no skill required in vegetable vending. Accordingly, the question of earning capacity must be left for the Ld. Tribunal to decide.

ii. The appellant has still not purchased a prosthetic leg, and therefore, when there is no question as to purchase of the prosthetic, there can be no compensation for the prosthetic leg.

## Analysis

### *Loss of Earning*

13. Having considered the respective submission of the parties and in particular relying on a decision by Ld. Division Bench of this Court, in ***Govt. of NCT of Delhi and Another v. Shri Pal***, 2023 SCC OnLine Del 1144, where income of a vegetable vendor was assessed at Rs. 12,000/- per month, relying

upon ***Syed Sadiq*** *(supra),* the Court sees no reason to reject the claim of Rs. 12,000/- per month towards income of the appellant. This income would be subject to a 25% increase in future, as per decision in ***National Insurance Co. Ltd. v. Pranay Sethi****, 2017 SCC OnLine SC 1270.*

*Functional Disability*

14. Hon'ble Supreme Court, in the matter of ***Raj Kumar v. Ajay Kumar***, (2011) 1 SCC 343, laid down a criteria for assessing functional disability as follows:

> "**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."*

15. The Ld. Tribunal assessed the appellant's functional disability as 45% and provided absolutely no justification or reasoning for the same. However, in light of the Supreme Court's decisions in ***Raj Kumar*** *(supra)* and ***Syed Sadiq*** *(supra)* the Court finds that the functional disability of the appellant may instead be assessed at 85%. The assessment at 45% has no basis nor any rationale.

*Age of the Appellant*

16. As regards the age of the appellant, the disability certificate of the appellant states that the appellant is 45 years old. However, the appellant relies upon his Aadhar card to signify he was born on 01.01.1970, being 43 years old at the time of the accident. This Court would not interfere with the assessment of the Ld. MACT in this regard since, while the appellant claims to be 43 years of age, it is stated he is 47 years old in his claim application. In this scenario, taking the age of the appellant to be 47 years is reasonable. Therefore, the multiplier shall be 13 as per the decision in ***Pranay Sethi*** *(supra).*

*Prosthetic Leg*

17. Hon'ble Supreme Court in the matter of ***Mohd. Sabeer alias Shabir Hussain v. Regional Manager, U.P. State Road Transport Corporation****,* 2022 SCC OnLine SC 1701, as regards to maintenance of a prosthetic leg noted that:

> *"23. As per the current compensation given for the prosthetic limb and its maintenance, it would last the Appellant for only 15 years, even if we were to assume that the limb would not need to be replaced after a few years. The Appellant was only 37 years at the time of the accident, and it would be reasonable to assume that he would live till he is 70 years old if not more. We are of the opinion that the Appellant must be compensated so that he is able to purchase three prosthetic limbs in his lifetime and is able to maintain the same at least till he has reached 70 years of age. For the Prosthetic limbs alone, the Appellant is to be awarded compensation of Rs. 7,80,000 and for maintenance of the same he is to be awarded an additional Rs. 5,00,000/-."*

18. There is no evidence on record nor was there an affirmative response by the appellant's counsel regarding the actual purchase of the prosthetic leg by the appellant. In fact, it was submitted that he was using a prosthetic leg provided by

a charitable organisation in Jaipur, free of cost. This Court, therefore, finds no reason to interfere and increase the amount already awarded on that count (being Rs.1,50,000/-).

*Compensation awarded*

19. On the basis of the abovementioned facts and analysis, this Court is of the opinion that the just compensation awarded to the claimant/appellant under different heads ought to be as follows:

| S.No. | Heads | Compensation |
|---|---|---|
| 1. | Compensation towards pain and sufferings | Rs. 1,50,000/- |
| 2. | Loss of amenities and enjoyment | Rs. 1,50,000/- |
| 3. | Compensation towards disfiguration | Rs. 1,50,000/- |
| 4. | Loss of future earnings due to injuries (Income + 25% future increase) X 12 Months X Multiplier of 13 X Disability of 85% | **Rs. 19,89,000/-** (12,000 + 25%) X 12 X 13 X 85% |
| 5. | Loss of earning of Petitioner for six months @ Rs. 12,000/- per month | **Rs. 72,000/-** |
| 6. | Expenses towards medical bills | Rs. 15,379/- |
| 7. | Compensation towards conveyance and special diet (without bills) | Rs. 25,000/- |
| 8. | Compensation towards attendant charges for two months @ Rs. 7,725/- per month | Rs. 15,450/- |
| 9. | Compensation towards prosthetic leg | Rs. 1,50,000/- |
| | Total | **Rs. 27,16,829/-** |

20. In view of the aforesaid facts and circumstances, the impugned judgement is liable to be modified as above and the claimant is held entitled to be awarded compensation to the tune of Rs. 27,16,829/- along with 9% interest per annum from the date of making the application.

21. Accordingly, the appeal stands allowed, in terms of the above.

**(ANISH DAYAL)**
**JUDGE**

**NOVEMBER 23, 2023/RK**