



2024:DHC:10205



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

% ***Date of Decision: 11th December 2024***

+ **MAC.APP. 95/2023**

THE ORIENTAL INSURANCE CO. LTD.Appellant

Through: Mr. Pankaj Seth, Advocate.

versus

1. Sh. DEVENDER KUMAR SHARMA
S/o Late Sh. Bihari Lal Sharma
R/o F-20/86, 2nd Floor,
Sector-15, Rohini,
Delhi.Respondent No.1

2. Sh. DUSHYANT PRATAP
S/o Sh. Anil Kumar
R/o A-1/315, Sector-17,
Rohini, Delhi.Respondent No. 2

3. Sh. AMIT SINGH
S/o Sh. Anil Kumar
R/o A-1/315, Sector-17,
Rohini, DelhiRespondent No. 3
Through: Ms. Aditi Gupta, DHCLSC for R1
with R1.

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G E M E N T (Oral)

1. The Appeal under Section 173 of the *Motor Vehicles Act, 1988*



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(‘M.V. Act’ *hereinafter*) has been filed on behalf of the Appellant/Insurance Company, against the impugned Award dated 14.11.2022 *vide* which the compensation in the sum of Rs.10,16,000/- along with the interest @9% p.a. to the Respondent No.1/Injured, Mr. Devender Kumar, for the injuries suffered in the road accident on 18.05.2019.

2. The Insurance Company has challenged the impugned Award on the following *grounds*:

- (i) that the Permanent Disability of 28% has been taken as Functional Disability of 28% despite the fact that he was not working and needs to be revised to 10% - 14%;
- (iii) that the Loss of Income has been wrongly assessed as per the Minimum Wages in the sum of Rs.17,508/- when he was not working ; and
- (iv) that the compensation under Non-pecuniary Heads, is on the higher side.

3. ***Learned counsel on behalf of the Injured*** submits that because of the Permanent Disability, the injured is still having difficulty in walking and sitting, which has got enhanced with age. It is submitted that the assessment of Functional Disability, has been rightly made by the learned Tribunal.

4. Further, the Certificate of Electrician had been produced and learned Tribunal has rightly assessed the income of the injured on the basis of Minimum Wages.

5. It is submitted that the Award needs no interference and the Appeal be dismissed.

6. **Submissions heard and Record Perused.**

7. ***Briefly stated***, on 18.05.2019, the petitioner was going towards his



residence on his motorcycle bearing no. DL4SCY6748. At about 1:00 pm, when he reached at Jail Road in front of Rohini Jail, he took a U-turn to go to the opposite side of the road. All of a sudden, Motorcycle bearing registration no. DL8SCK3332 ('offending vehicle' *hereinafter*) which was being driven by its Driver (Respondent No. 2) at a very high speed, in a rash and negligent manner, came from Outer Ring-Road side and hit against his motorcycle with great force, as a result of which, he fell and sustained grievous injuries.

8. FIR No. 338/2019 Sections 279/338 of the *Indian Penal Code, 1860* and Sections 5/180 of the M.V. Act, was registered.

9. The Petition under section 166 and 140 of the M.V. Act was filed by the Claimant/Injured seeking grant of compensation.

Loss of Income:

10. The *first ground* of challenge is that the Loss of Income in the sum of Rs.1,05,048/- has been wrongly assessed as per the Minimum Wages in the sum of Rs.17,508/- per month, when in the FIR recorded on the statement of the injured, he stated that he was sitting idle and not working.

11. The Ld. Tribunal in the impugned Award dated 14.11.2022 relied on the testimony PW-1 Sh. Devender Kumar Sharma, injured who in his Affidavit of evidence deposed that he was doing a Private job and was earning approximately Rs. 20,000/- p.m. He also furnished his 10th Class Certificate Ex. PW1/5 to prove his educational qualifications. Therefore, the Tribunal granted Loss of Income on the basis of Minimum Wages of a Matriculate person.

12. Learned counsel on behalf of the Insurance Company has vehemently



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contended that the injured has stated in the FIR No.338/2019 that '*Aajkal Main Ghar Per Hi Khali Hun*' which clearly implies that he was not in any employment and was not working at the time of the accident. Pertinently, no details of the private job which he was allegedly doing has been furnished. It is, therefore, submitted that the injured was not doing any work and therefore, there is no question of there being any Loss of Income during the treatment period or even for the purpose of ascertaining Loss of Future Earning Capacity.

13. Pertinently, the statement of the injured was recorded again in the Court on 19.09.2022 when he made a request for release of 75% of the compensation amount immediately while the balance may be kept in FDR. He deposed on Oath that he was presently doing the work of Electrician and earning Rs.20,000 – Rs.25,000/- per month. His son had expired in train accident on 17.03.2022 and had two school going grand children and he is the only earning member of the family.

14. It has been rightly appreciated by the learned Tribunal that what actually appears to be the implication of the statement made by the injured in his FIR that at the relevant moment he was not working but it cannot be inferred that he had not been working in the past or he did not take up a job after the accident. This is more so in the light of his statement recorded on 19.09.2022, wherein he explained the circumstances that his son had died in a train accident, and he has two young grand children to support.

15. While there is no cogent evidence of the profession of the injured or of his income, but it cannot be inferred that he was not doing any job. Even for the sake of arguments if it is accepted that he was not in any formal



employment, it cannot be overlooked that he though 67 years old would be doing some work to maintain the household and also be doing some vocation for livelihood. In the circumstances the arguments of the learned Counsel for the Insurance Company that the injured was not doing any work and is not entitled to any Loss of Income during the period of accident is not tenable.

16. However, the question arises about how much the monthly income of should be the injured to be assessed. While there being no cogent evidence forthcoming about his vocation and profession, the learned Tribunal has rightly assessed his income on the basis of Minimum Wages in the sum of Rs.17,508/- per month.

17. As per the Discharge Summary Ex.PW1/3 of Jaipur Golden Hospital, the injured remained admitted in the hospital from 18.05.2019 to 22.05.2019. He suffered from communicated fracture, subtrochanteric with introchanteric extn. left and abductor tender injury. Learned Tribunal has rightly assessed the period of treatment as six months during which the injured may not have been able to work and a sum of Rs.1,05,048/- granted to the injured for Loss of Income during the treatment period is fully justified and does not warrant any interference.

Functional Disability:

18. The *second ground of challenge* against the impugned Award is that that the Permanent Disability of 28% has been taken as Functional Disability of 28% despite the fact that he was not working, which needs to be revised to 10% - 14%.

19. The Ld. Tribunal in the impugned Award observed that as per the



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Discharge Summary Ex. PW/13 (colly), the Injured/Respondent No. 1 suffered from '*commuted fracture, subtrochanteric with introchanteric extension left and abductor tender injury*'. Further, Disability Certificate Ex. PW1/6 of Medical Board of BSA Hospital, Delhi stated that the injured suffered 28% Permanent Disability *in relation to his left lower limb*, which was corroborated by PW2-Dr. Raghav Arora, SR, Department of Orthopedic, BSA Hospital, Delhi.

20. As already discussed, the injured may not have been able to define his vocation or the nature of his job. The injured had produced his National Trade Certificate issued by National Council for Training in Vocational Trades certifying that he has completed the course of training at Industrial Training Institute, Ambala City and passed the prescribed Trade Test in the Trade of Electrician. In these circumstances it can be accepted that he is an Electrician by profession which implies that he has to do lot of physical movement. The learned Tribunal has rightly taken the *Functional Disability* as 28% qua the whole body. There is no thumb rule that the Functional Disability in every circumstance should be taken as half of the Permanent Disability. The Functional Disability has to be assessed in relation to the vocation or profession of the injured. Therefore, the Functional Disability has been rightly assessed as 28% and does not warrant any interference.

21. ***Therefore, no interference is warranted with the award on this ground.***

Compensation under Non-Pecuniary Heads:

22. The *last ground* agitated by the Appellant/Insurance Company is that compensation under Non-pecuniary Heads is also on the higher side. The



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Ld. Tribunal has granted Rs. 1,00,000/- under the head of Pain and Suffering and Rs. 75,000/- towards Loss of amenities of life, which is a reasonable amount considering the injuries and the permanent Disability suffered by the injured and warrants no interference.



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Relief:

23. There is no merit in the Appeal, which is accordingly dismissed.

**(NEENA BANSAL KRISHNA)
JUDGE**

DECEMBER 11, 2024/RS