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

% ***Date of decision: 01st October, 2024***

+ **MAC.APP. 260/2022**

AKSHAY KUMARAppellant

Through: Mr. Amit Kumar Malhan, Advocate.

versus

NATIONAL INSURANCE CO. LTD. & ORS.Respondents

Through: Ms. Neerja Sachdeva, Advocate for
R- 1.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T (Oral)

NEENA BANSAL KRISHNA, J.

1. The present Appeal under Section 173 of the Motor Vehicles Act, 1988 (*hereinafter referred to as "MV Act, 1988"*) has been filed on behalf of the Appellant against the Judgment and Award dated 07.08.2020 *vide* which the appellant has been granted a compensation of Rs. 11,17,000/- on account of injuries sustained in a Road Accident.
2. **The facts in brief are** that on 15.04.2018 at about 4 pm, while the claimant was crossing the road at Dhaka Chowk, one royal Enfield vehicle driven at a very high speed and negligently on the wrong side of the road, crashed into the claimant and he sustained multiple injuries leading to *40% permanent Neuropsychological and Locomotor Disability*.



3. The *first Award* was passed by the court vide Order dated 07.03.2018 whereby an amount of Rs. 11,17,000/- was granted to the petitioner, on the basis of his 40% permanent neuropsychological and locomotors disability, by calculating the functional disability/loss of earning capacity as 25% qua the whole body.
4. The appellant challenged the Award before this Court and *vide* Order dated 22.05.2019, the matter was remanded back for further evidence of the parties to prove that aforesaid disability had actually resulted into the denial of driving licence to the petitioner.
5. The Petitioner examined witness from the RTO to prove that Driving License of the appellant has not been renewed till date and would not ever be renewed in light of the disability sustained. However, *vide* Impugned Award dated 07.08.2020, the Ld. Tribunal observed that the petitioner has not been able to bring sufficient evidence on record to prove that he in fact was actually disabled to the extent that his driving licence either has been revoked or has been cancelled or could not be renewed on account of medical condition. The Award dated 07.03.2018 was not interfered.
6. The main ***Ground of challenge*** in the present Appeal is that the appellant was a commercial driver who had sustained 40% disability, because of which he was not able avail the Driving Licence and join the same vocation. The disability and absence of a valid Driving Licence incapacitated him forever to work as a commercial driver and he has been compelled to adopt other means of earning his livelihood.
7. ***Ld. Counsel for the Appellant has submitted*** that the learned Tribunal has ignored the evidence on record which establishes that the appellant was a commercial driver by profession. The appellant had suffered



40% of permanent neuropsychological and locomotor disability as assessed by the Medical Board, which rendered him incapable of doing any field work or assignment involving use of normal faculties of human beings.

8. The learned Tribunal had taken the loss of earning capacity at 25% which should have been taken as 100%. However, no reason whatsoever has been assigned for reducing the earning capacity below the assessed disability. The earning capacity has to be decided on case-to-case basis, but in the present case, where the circumstances establish that the appellant had suffered total loss in his profession due to disability, the reduction in taking loss of earning capacity as 25% was not justified and the actual loss of earning and functional disability should have been assessed as 100% instead of 25%.

9. ***Ld. Counsel for the Appellant*** has referred to Section 16 of MV Act, 1988 read with *Rule 5 of Central Motor Vehicle Rules, 1989* which provide for getting a license. It is argued that in accordance with these Rules, the appellant has been totally debarred from obtaining the license. The learned Tribunal has ignored the evidence of the official examined from RTO who affirmed that the Driving License has not been renewed.

10. The appellant is survived by wife and children and now due to reduced earning capacity is not able to cater to family needs fully as he used to earlier with full body function. Hence, the appellant has challenged the quantum of Award as granted by the learned Tribunal.

11. **The learned counsel on behalf of the respondent No.1** has highlighted that there is no evidence whatsoever led by the appellant to show that he ever applied for the Commercial License or was denied the same. The Permanent Disability Certificate on which the reliance has been



placed, has been issued the Institute of Human Behaviour and Allied Sciences dated 02.06.2017, wherein it has been certified that his current neuropsychological and locomotor disability is about 40% which seems to be permanent in nature and unlikely to improve.

12. It is submitted that neither has the appellant adduced any evidence nor has he established any circumstances from which it could be inferred that he has suffered total loss of earning capacity.

13. Finally, it is submitted that there is no infirmity in the impugned Award and the present Appeal is liable to be dismissed.

14. **Submissions heard.**

15. The appellant, who had suffered injuries in an accident which took place on 15.04.2014, had filed a Petition under Section 166 of the MV Act, 1988 claiming compensation for the injuries suffered by him in the accident.

16. The appellant in his testimony as **PWI** has proved his Disability Certificate, **Ex.PW1/6** issued by the Institute of Human Behaviour and Allied Sciences by the Neurological Board of the said Hospital, which reads as under: -

**“DISABILITY NEURLOGICAL BOARD REPORT OF THE
PATIENT AKSHAY KUMAR (CRF NO. 2016-11-72582,
2016-11-751180 & 2016-12-79328)**

*Court: Sh. Rajender Kumar Shastri, PO-MACT-1 (North),
Room No. 12, Ground Floor, Rohini Court, Delhi.*

*Reference: Hon'ble Court order dated 28.10.2016 against
Petition No. 5022/16, Akshay vs. Mohd. Mushtafa.*

*The patient Akshay Kumar was examined by the
Disability Medical Board for neurological disabilities at IHBAS
on 06.03.2017. The Disability Board opined that it is a case of
Road Traffic Accident with head injury with right lower limb*



monoparesis and neuropsychological impairment.

His current neuropsychological and locomotor disability is about 40% which seems to be permanent in nature and unlikely to improve.”

17. From the aforesaid Certificate, it is evident that it is not a Disability Certificate in the sense that it has not been issued by a Disability Board, which comprises Doctors from all discipline; rather it is only a Certificate issued by the Department of Neurology, IBHAS. Furthermore, it assessed the **current** neuropsychological and locomotor disability to be about 40% which was termed “*which seems to be permanent in nature and unlikely to improve*”.

18. The learned Tribunal has considered the aforesaid Certificate and also the evidence led on behalf of the parties to assess the *loss of earning as 25%* and consequently calculated the compensation amount in the sum of Rs. 11,17,000/- which was granted to him *vide First Award* dated 07.03.2018.

19. The Appeal against the said Award dated 07.03.2018 was preferred by the appellant, which was remanded back *vide Order* dated 22.05.2019 to the learned Tribunal, with the directions to the Tribunal to determine *whether the applicant has been rendered incapable for issuance of the Driving Licence of a three wheeler or any other vehicle, so that he may continue his vocation as a driver*. The Insurance Company was also granted one opportunity to advance the case, including the examination of the appellant through a Medical Board, if so deemed necessary.

20. With the remand of the Award, the matter was again taken up before the learned Tribunal. The appellant in support thereof examined **PW2/Jai Prakash**, Dealing Assistant, Transport Department, Mall Road, Delhi on



23.01.2020.

21. The learned Tribunal considered the additional evidence which was led and concluded that the evidence of *PW2/Jai Prakash* is only to the extent that the Licence Ex. PW2/1 of the petitioner was renewed/alterd on 22.03.2013 for commercial purposes (three wheeler cab and LMV transport), which as per their record, was valid upto 21.03.2016.

22. Apart from this, no further evidence has been brought by the appellant after the matter was remanded back that his licence was ever revoked. No evidence was even led to show that his driving licence has been revoked by the licensing authority or even to the extent that he has ever applied for a driving licence with his altered situation on account of accident or that on the basis of such disability, the Authority has refused to issue/renew his driving licence for commercial purpose, as alleged.

23. The FIR pertains to the year 2014 and the earlier Driving Licence of the Claimant was valid upto 21.03.2016. It was the duty of the Claimant to prove on record that either his Driving Licence was cancelled after the accident or prior to the validity period of the Driving Licence. Section 16 of MV Act, 1988 on which the reliance has been placed by the appellant, is only with respect to the revocation of the driving licence, which is neither the pleading of the petitioner and therefore, does not come to his rescue.

24. The learned Tribunal thus, concluded that the appellant has not been able to produce sufficient evidence on record to prove that he was actually disabled to the extent that his Driving Licence either had been revoked or cancelled or could not be renewed on account of medical condition. Therefore, concluding that there was no additional evidence to prove the aforesaid disability resulting in denial of the Driving Licence, the earlier



Award was not modified.

25. It is pertinent to observe that the appellant in his Original Claim Petition as PW1 had deposed that he was the sole bread-earner of the family, comprising his wife and three school-going children and in the absence of income of the appellant, his family's future is in dark. The appellant simply proved his Disability Certificate, Ex.PW1/6 and the copies of DAR along with the documents, Ex.PW1/5.

26. The Disability Certificate Ex. PW1/6 is issued by the Department of Neurology, IBHAS. Furthermore, it assessed the **current** neuropsychological and locomotor disability to be about 40% which was termed "*which seems to be permanent in nature and unlikely to improve*". It has not been issued by a duly constituted Disability Board, which comprises Doctors from all discipline. No Doctor has been examined to explain the nature of disability or the extent to which it leads to functional disability in a person who suffers from such disability. Further, it was a Certificate which gave the current situation on the date of issue of the Certificate in October, 2016 on the directions of the Court.

27. Despite having been given an opportunity, the Appellant has failed to produce any cogent document in proof of his functional Disability. Aside from PW-2 Jai Prakash who merely deposed that the License of the petitioner has not been renewed after it expired, no evidence whatsoever has been led to show that he ever applied for a Licence and the same was denied to him on account of his disability.

28. Another pertinent aspect is that there is no additional evidence to show that the injury sustained is permanent in nature so as to determine his functional disability and loss of earning capacity as 25%. Neither the



appellant has examined any doctor to the extent that he would not be able to get driving licence nor the petitioner has been able to prove by summoning any record or doctor or any person from the concerned Authority that with such disability the Authority does not or would not issue driving licence to the petitioner. The petitioner has failed to step into the witness box to adduce additional evidence in regard to the incapacity to earn.

29. It is thus, concluded that the *Impugned Award* dated 07.08.2020 is a well-reasoned and does not suffer from any illegality or impropriety and hence, warrants no interference.

30. Accordingly, the present Appeal is dismissed.

**NEENA BANSAL KRISHNA
(JUDGE)**

OCTOBER 1, 2024
S.Sharma