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

% *Date of Decision: 04 December, 2024*

\+ **MAC.APP. 558/2018, CM APPL. 24479/2018 (stay)**

IFFCO TOKIO GENERAL INSURANCE CO LTD.....Appellant

Through: Counsel for Appellant (appearance not given)

.

versus

1. MOHD NAUSHAD ALAM
S/o Mohd. Anwar .....Respondent No.1

2. PRADEEP YADAV
S/o Sh. Ram Chander Yadav ….Respondent No.2

3. M/S VIKAS EMARK INFRASTRUCTURE
…Respondent No.3

Through: Mr. R.K. Nain and Mr. Chandan Prajapati, Advocates.

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\+ **MAC.APP. 439/2023**

MOHD. NAUSHAD ALAM .....Appellant

Through: Mr. R.K. Nain and Mr. Chandan Prajapati, Advocates.

versus

1. IFFCO TOKIO GENERAL INSURANCE CO. LTD.
Through its Manager .....Respondent No.1

2. PRADEEP YADAV
S/o Sh. Ram Chander Yadav ….Respondent No. 2

3. M/s VIKAS EMARK INFRASTRUCTURE

....Respondent No. 3

Through: Counsel for Respondents (appearance not given)

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

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

CM APPL. 49074/2023 (for condonation of delay) in MAC.APP. 439/2023

1. An Application has been filed on behalf of the Appellant seeking condonation of delay of 1217 days in filing the accompanying Appeal.

2. For the reasons stated in the Application and in the interest of justice, the delay of 1217 days is condoned and the Application is allowed.

3. The Application is disposed of accordingly.

MAC.APP. 558/2018 & MAC.APP. 439/2023

4. The MAC.APP. 558/2018 Appeal under Section 173 of the *Motor Vehicles Act, 1988* ('M.V. Act' *hereinafter*) has been filed on behalf of the *Appellants/Insurance Company,* to challenge the Award dated 05.05.2018 *vide* which the compensation in the sum of Rs.18,22,000/- along with the interest @9% p.a., has been granted to Mohd. Naushad Alam/Respondent No. 1, the injured.

5. The Insurance Company has challenged the quantum of Award, on the following *grounds*:-

(i) that the Permanent Disability has been assessed as 60% and the Functional Disability has also been taken as 60%, which should have been less.

(ii)The Salary Slip has been proved according to which the salary of the injured was Rs.7,154/- despite which higher wages as Rs.7,722/- has been taken on the basis of Minimum Wages;

(iii) that Rs.4,00,000/- has been granted for Future Medical Treatment, without any evidence; and

(iv) that the Recovery Rights have been wrongly denied to the Insurance Company despite the driving license of the driver having been proven to be false.

MAC.APP. 439/2023 by the Claimant:

6. Cross-Appeal bearing **MAC.APP. 439/2023** under Section 173 of the Motor Vehicles Act, 1988 ('M.V. Act' *hereinafter*) has been filed on behalf of Mohd. Naushad Alam/Claimant, on the *sole ground* that the injured was working as a helper and on account of amputation of right leg below knee, he can no longer work as helper and the Functional Disability should have been taken as 100%.

7. **Submissions heard.**

8. *Briefly Stated*, at about 11:30 am on 24.04.2013, the Mohd. Naushad Alam/Claimant was going home from his office on foot. When he reached Assam Timber Market, Rajdhani Park at Nangloi road, a truck bearing registration No.HR-63A-5916 ('offending vehicle' *hereinafter*) came at a very high speed in a rash and negligent manner and hit the petitioner. The petitioner fell and his right leg got stuck under the wheel of the truck due to which he sustained grievous injuries. Thereafter, he was taken to Cygnus Sonia Hospital.

9. FIR No.126/13 u/s 279/338 *Indian Penal Code, 1860* ('IPC' *hereinafter*) was registered at Police Station Nangloi and Chargesheet was filed against Pradeep Yadav (Respondent No. 2), driver of the offending truck.

Assessment of Functional Disability:

10. The *first ground of challenge* agitated by the Appellant/Insurance company is that the Permanent Disability has been assessed as 60% and the Functional Disability has also been taken as 60%, which should have been less.

11. In Cross-Appeal bearing ***MAC.APP. 439/2023***, the Injured Mohd. Naushad Alam/Claimant has sought enhancement on the *sole ground* that the injured was working as a helper and on account of amputation of right leg below knee, he can no longer work as helper and the Functional Disability should have been taken as 100%.

12. PW-2/Dr.Naresh Chandra, Ortho Specialist, Guru Gobind Singh Govt. Hospital, Delhi deposed that the patient's case was of right side below-knee amputation and his permanent physical disability was stated to be to the extent of 60% in relation to his right lower limb. He proved Disability Certificate in this regard as Ex.PW2/l.

13. In his cross-examination by Appellant/Insurance Company, PW2/Dr. Naresh Chandra testified that the injured had informed him that his right leg was amputated due to the injuries sustained in the accident.

14. On the basis of testimony of PW2, the Disability Certificate and having regard to his occupation of being a Helper, the Ld. Tribunal has rightly taken the *Functional Disability* of 60% in relation to whole body. Therefore, no interference is warranted in the impugned Award on this ground.

Income of the Injured:

15. The *Second ground of challenge* agitated by Appellant/Insurance Company is that the Salary Slip of the injured has been proved, according to which the salary of the injured was Rs.7,254/- despite which higher wages as Rs.7,722/- has been taken on the basis of Minimum Wages.

16. The Claimant/Injured had deposed that he was working as a helper in DD Motors and earning Rs.7,722/- per month as per Minimum Wages in Delhi. He proved his Salary Certificate Ex. PW l/E of Poma Enterprises for the month of February, 2013 bearing his signatures showing that he was working as Helper i.e. an unskilled worker and getting gross salary of Rs. 7,254/- per month.

17. No person can be paid less than the minimum wages. The Ld. Tribunal has rightly held that the Claimant who was working as an unskilled worker on the date of the accident, was entitled to the salary of the injured as per the prevailing Minimum Wages in Delhi at that time i.e. Rs.7,722/- per month.

***Future Medical Expenses for Artificial Limb*:**

18. The *Third ground of challenge* of the Appellant/Insurance Company is that Rs.4,00,000/- has been granted by the Ld. Tribunal for Future Medical Treatment, without any evidence. The Ld. Tribunal observed that keeping in view the facts and circumstances, evidently the petitioner would require some aide in future on account of **future medical expenses for artificial limb and consequently awarded Rs. 4,00,000/-.**

19. The Apex Court in the case of *Mhd. Sabeer @ Shabir Hussain v. Regional Manager, U.P. SRTC and Ors*., Civil Appeal No. 9070-9071 of 2022 decided on 09.12.2022 has duly held that the prosthetic limb also requires repair and maintenance after every 6 months to 1 year, and each

repair costs between Rs.15,000 to Rs. 20,000/-. Further, it was observed that in the case of *Anant Son Of Sidheshwar Dukre vs Pratap Son Of Zhamnnappa Lamzane* *AIR 2018 SC 5081 by* the Apex court that the purpose of fair compensation is to restore the injured to the position he was in prior to the accident as best as possible.

20. In the present case, the injured suffers from below-knee amputation on right side and is suffering with permanent physical disability to the extent of 60% in relation to his right lower limb. *Therefore, in light of the aforesaid and consideration of totality of the record, the Ld. Tribunal has rightly given future medical expenses for artificial limbs and warrants no interference.*

Recovery Rights:

21. The *fourth ground* on which the impugned Award is challenged by the Insurance Company is that the Recovery Rights have been wrongly denied to the Insurance Company despite the driving license of the driver being proven to be false. The Ld. Tribunal has observed in the impugned Award that it is evident from the testimony of R2Wl/Jai Bhagwan (Owner) that as a prudent employer, respondent No.2 had taken the interview of Respondent No.2/Driver and had found him to be competent to drive. Respondent No.3/Owner had taken the driving license of Respondent No.2/Driver at the time of Joining his company and taken due care and precaution while appointing him as a driver.

22. Ld. Tribunal made reference to *Pepsu Road Trans. Corporation v. National Insurance Co. Ltd.* 2013 ACJ 2440 (SC) wherein the Apex Court has observed that the defence of the Insurance Company that the driver was having fake driving licence at the time of accident, was not sufficient to avoid liability. The onus is on the insurer to prove that owner of vehicle had

failed to take reasonable care in employing a qualified and competent driver having valid licence.

23. Therefore, from the testimony of R2Wl/Jai Bhagwan (Owner), it was established that he had taken due care at the time of employing the driver. Therefore, the Ld. Tribunal has correctly not granted recovery rights to the Appellant/Insurance Company. *No interference is warranted in the impugned Award on this ground.*

Conclusion:

24. The Appeal and Cross Appeal are without merit and are accordingly disposed of.

25. The Statutory amount be released to the Insurance Company, as per Law.

(NEENA BANSAL KRISHNA)
JUDGE

DECEMBER 4, 2024/RS