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

% ***Date of decision: 20th December, 2024***

+ **MAC.APP. 668/2024, CM APPL. 74910/2024 (stay)**

ORIENTAL INSURANCE COMPANY LTDAppellant

Through: Mr. Tarkeshwar Nath and Mr.
Anant Dev, Advocates.

versus

1. **KHEM CHAND ALIAS BITTU**
S/o Sh. Nanak ChandRespondent No.1

2. **SH. YOGENDRA SINGH**
S/o Sh. Sukhvir SinghRespondent No.2

3. **SH. AMIT**
S/o Sh. Sijander Singh ...Respondent No.3

Through: Mr. Rajesh Kumar, Standing
Counsel with Mr. Yash
Narayan, Ms. Mishika
Padita, Mr. Chagez Ali Khan
and Mr. Rahul Sharma,
Advocates.

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T (oral)

CM APPL. 74909/2024 (Exemption)

1. Exemption allowed, subject to all just exceptions.
2. The Application stands disposed of.

CM APPL. 74911/2024 (delay)



3. An Application under Section 5 of the Limitation Act, 1963 read with Section 173 (Proviso) of the Motor Vehicle Act, 1988 ('M.V. Act' *hereinafter*) has been filed on behalf of the Appellant for condonation of delay of 1 day in filing the accompanying Appeal.

4. For the reasons stated in the Application, the delay of 1 day in filing the accompanying Appeal, is condoned and the same is allowed.

5. The Application is disposed of accordingly.

MAC.APP. 668/2024

6. The Appeal under Section 173 of the Motor Vehicle Act, 1988 ('M.V. Act' *hereinafter*) has been filed on behalf of the Appellant/Insurance Company against the impugned Award dated 22.08.2024 *vide* which the compensation in the sum of Rs.52,87,570/- along with the interest @ 8% p.a. has been granted, on account of the injury suffered by Mr. Khem Chand @ Bittu, in a road accident on 08.10.2018.

7. *Learned counsel on behalf of the Insurance Company has challenged the Award, on the following grounds:-*

(i) that there was *contributory negligence* on the part of the injured and the compensation amount should have been reduced accordingly; and

(ii) that the *compensation under the Non-Pecuniary Heads, is on the higher side.*

8. **Submissions heard and the record perused.**

9. ***Briefly stated***, on 08.10.2018 at about 10:45 pm at Zakira Flyover, Amar Park, Jhuggi Service Road, New Delhi, the



Petitioner/injured, Mr. Khem Chand @ Bittu, was riding pillion on a Motorcycle bearing registration No. DL 6S AK 9429 (sic), which was being driven by his friend, Mr. Prince Kumar. It was hit by offending Truck bearing registration No. HR 69A 5373, which was being driving by Respondent No. 2, Mr. Yogendra Singh (*the driver*), resulting in grievous injuries to the Claimant/injured. The right arm of the Petitioner got crushed under the front wheel of the offending vehicle resulting in amputation of his forearm.

10. *FIR No. 377/2018 under Sections 279/337/338 Indian Penal Code, 1860 was registered at Police Station Sarai Rohilla. After due investigation, the Charge-Sheet was filed.*

11. Correspondingly, the DAR was filed before the learned Tribunal. The Claim Petition under Section 166 read with Section 140 of the M.V. Act, has also filed before the learned Tribunal. *Vide Award dated 05.10.2020, the learned Tribunal concluded that there was no rashness and negligence proved on the part of the driver, Mr. Yogendra Singh, of the alleged offending truck and **thereby dismissed the Claim Petition.***

12. However, an Appeal was preferred before this Court against the dismissal of the Claim Petition. This Court, *vide Judgment dated 08.05.2024* considered the entire circumstances and held that it was unhesitatingly demonstrated that it was the Respondent No. 2, driver, who was guilty of rash and negligence of driving of the offending vehicle resulting in lifelong injuries and Permanent Disability to the injured. The Appeal was allowed and the case was remanded back for



the assessment of the quantum of compensation, after hearing both the parties. Thereafter, the learned Tribunal, awarded compensation in the sum of Rs.52,87,570/- along with the interest @ 8% p.a., to the injured vide the impugned Award dated 22.08.2024.

Contributory Negligence:

13. ***The first ground of challenging*** the Award is that there was contributory negligence on the part of the injured, however, this aspect has been duly considered in the earlier Judgment dated 08.05.2024, of this Court and the same cannot be re-agitated. It has been categorically observed that the rashness and negligence was that of the driver of the truck, therefore, this contention raised on behalf of the Insurance Company, is without any merits.

Compensation under Non-Pecuniary Heads:

14. ***The second ground of challenge*** is that the compensation under Non-Pecuniary Heads, is on the higher side and is required to be reduced. The Non-Pecuniary Losses have been awarded as under:-

S.No.	Heads	Amount granted by the Tribunal
1.	Pain and Suffering	Rs.1,00,000/-
2.	Loss of amenities of life	Rs.1,00,000/-
3.	Disfiguration	Rs.100,000/-
4.	Loss of marriage prospects	Rs.5,00,000/-

15. It cannot be overlooked that the injured was a young man of 27



years, who has suffered amputation of his arm. Undoubtedly, on account of the Permanent Disability, not only has he been deprived of the amenities of life, but has suffered disfigurement also and his marriage prospects have been seriously marred. The compensation granted under Non-Pecuniary Heads, cannot be said to be on higher side. There is no ground for revision of the compensation under these Heads.

Functional Disability:

16. *The next ground* on which the Award has been challenged is that the injured had suffered 80% of Permanent Disability but *Functional Disability* has been taken as 100% when in fact, it should have been taken as lesser percentage.

17. The learned Tribunal has cogently considered that even though there is Permanent Disability of 80% suffered on account of amputation of right upper limb, it cannot be ignored that he was doing part-time mobile repair work and because of this Permanent Disability, he would not been able to do the job.

Conclusion:

18. The learned Tribunal has, therefore, rightly assessed the Functional Disability as 100% and the same *does not merit any interference*. The Appeal is hereby, dismissed.

19. The Appeal is disposed of accordingly along with the pending Application.

(NEENA BANSAL KRISHNA)



2024:DHC:10100



JUDGE

DECEMBER 20, 2024/RS