



IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 16.05.2025

+ **MAC.APP. 313/2021**

SHYAM SINGH

.....Appellant

versus

**HDFC ERGO GENERAL INSURANCE CO.
LTD. & ORS.**

..... Respondents

Advocates who appeared in this case:

For the Appellant : Mr. Umesh Kumar, Adv.

For the Respondents : Ms. Niyati, Adv. for R-1 (through VC)

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HON'BLE MR JUSTICE AMIT MAHAJAN

JUDGMENT

1. The present appeal is filed challenging the award dated 24.06.2020 (hereafter '**impugned award**') passed by the learned Presiding Officer, MACT (South), Saket Courts, New Delhi in MACP No. 4608/2016.

2. Briefly stated, on 01.01.2016, the appellant/victim, then aged 30 years and employed as a security guard in New Delhi, suffered grievous injuries due to the rash and negligent driving of Respondent



No. 2, resulting in 77% permanent physical impairment in relation to his right lower limb.

3. The learned Tribunal, after evaluating the medical evidence and deposition, assessed the appellant's functional disability at 39% and awarded compensation for a sum of ₹19,06,637/- along with interest @ 9% per annum in favour of the appellant.

4. Aggrieved by this assessment and the resultant award, the appellant has approached this Court seeking enhancement of the compensation.

5. The learned counsel for the appellant *inter alia* submitted that the learned Tribunal grossly erred in computing the loss of future income by taking functional disability as only 39%, without due regard to the occupational impact of the injury. It is contended that the appellant was employed in a physically demanding role as a security guard, which he is no longer capable of performing due to the nature of his disability.

6. He further submitted that given the socio-economic conditions and the appellant's limited education, it is unrealistic to expect him to obtain a desk job or alternative employment yielding a comparable income.

7. The learned counsel placed reliance on the principles laid down in ***Raj Kumar v. Ajay Kumar* : (2011) 1 SCC 343**, and ***National Insurance Co. Ltd. v. Pranay Sethi* : (2017) 16 SCC 680**, to contend that a realistic assessment of the impact of disability on actual earning capacity must be undertaken.



8. He submitted that the learned Tribunal failed to appreciate that the appellant was hospitalised for 80 days and suffered mental and physical trauma. Therefore, compensation of ₹1,00,000/- each awarded against non-pecuniary loss is less in terms of pain and suffering and mental and physical shock.

Analysis

9. The central grievance of the appellant pertains to the assessment of functional disability by the learned Tribunal. The disability certificate issued by the Medical Board of Madan Mohan Malviya Hospital certified that the appellant suffers from 77% permanent physical impairment in relation to his right lower limb. However, the learned Tribunal, while computing compensation for loss of future earning capacity, took the functional disability to be only 39% of the whole body.

10. The learned counsel for the appellant contended that the assessment by the learned Tribunal is flawed both legally and factually. It is submitted that the appellant was employed as a security guard at the time of the accident—a job that necessitates prolonged standing, walking, mobility, and physical alertness. In such a profession, any substantial impairment to a lower limb directly impacts employability. The learned Tribunal failed to appreciate this critical aspect of the appellant's vocation, thereby rendering the assessment of 39% functional disability arbitrary and unjustified.

11. As held by the Hon'ble Supreme Court in the case of ***Raj Kumar v. Ajay Kumar & Anr.*** (*supra*), the extent of permanent



disability of a limb, expressed as a percentage, does not equate to the disability of the whole body. It was emphasised by the Hon'ble Apex Court that functional disability must be determined by considering the impact of the injury on the individual's overall earning capacity and ability to perform their occupation or daily activities. It was held that the percentage of disability mentioned for a specific body part cannot be directly assumed as a measure of total disability for the entire body. The relevant portion of the aforesaid judgment is reproduced hereunder:

*“9. The percentage of permanent disability is expressed by the doctors with reference to the whole body, or more often than not, with reference to a particular limb. **When a disability certificate states that the injured has suffered permanent disability to an extent of 45% of the left lower limb, it is not the same as 45% permanent disability with reference to the whole body.** The extent of disability of a limb (or part of the body) expressed in terms of a percentage of the total functions of that limb, obviously cannot be assumed to be the extent of disability of the whole body...*

*10. Where the claimant suffers a permanent disability as a result of injuries, the assessment of compensation under the head of loss of future earnings would depend upon the effect and **impact of such permanent disability on his earning capacity**...*

11. What requires to be assessed by the Tribunal is the effect of the permanent disability on the earning capacity of the injured; and after assessing the loss of earning capacity in terms of a percentage of the income, it has to be quantified in terms of money, to arrive at the future loss of earnings (by applying the standard multiplier method used to determine loss of dependency)...

12. Therefore, the Tribunal has to first decide whether there is any permanent disability and, if so, the extent of such permanent disability. This means that the Tribunal should consider and decide with reference to the evidence:

(i) whether the disablement is permanent or temporary;



(ii) if the disablement is permanent, whether it is permanent total disablement or permanent partial disablement;

(iii) if the disablement percentage is expressed with reference to any specific limb, then the effect of such disablement of the limb on the functioning of the entire body, that is, the permanent disability suffered by the person.

If the Tribunal concludes that there is no permanent disability then there is no question of proceeding further and determining the loss of future earning capacity. But if the Tribunal concludes that there is permanent disability then it will proceed to ascertain its extent. After the Tribunal ascertains the actual extent of permanent disability of the claimant based on the medical evidence, it has to determine whether such permanent disability has affected or will affect his earning capacity.

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.

14. For example, if the left hand of a claimant is amputated, the permanent physical or functional disablement may be assessed around 60%. If the claimant was a driver or a carpenter, the actual loss of earning capacity may virtually be hundred per cent, if he is neither able to drive or do carpentry. On the other hand, if the claimant was a clerk in government service, the loss of his left hand may not result in loss of employment and he may still be continued as a clerk as he could perform his clerical functions; and in that event the loss of earning capacity will not be 100% as in the case of a driver or carpenter, nor 60% which is the actual physical disability, but far less. In fact, there may not be any need to award any compensation under the head of "loss of future earnings", if the claimant continues in



government service, though he may be awarded compensation under the head of loss of amenities as a consequence of losing his hand. Sometimes the injured claimant may be continued in service, but may not be found suitable for discharging the duties attached to the post or job which he was earlier holding, on account of his disability, and may therefore be shifted to some other suitable but lesser post with lesser emoluments, in which case there should be a limited award under the head of loss of future earning capacity, taking note of the reduced earning capacity.”

(emphasis supplied)

12. Applying the said framework in the present case, it is evident that although the appellant’s disability is partial in the anatomical sense (limited to the right lower limb), it results in occupational impairment for a person engaged in physical security work. The inability to stand or patrol for long hours renders the appellant unfit for his pre-accident job. Thus, while the physical impairment is 77%, the functional disability is significantly higher than what has been mechanically recorded by the learned Tribunal.

13. This Court in ***Cholamandalam MS General Ins. Co. Ltd. v. Ram Kishan*** : 2018 SCC OnLine Del 10001, assessed the percentage of functional disability of the injured claimant even more than the permanent disability sustained by him. It was held as under:

*“7. It has also come in the additional evidence of Dr. Adarsh Kumar that Injured is susceptible to frequent infection and **he will frequently need medical consultation and due to the deformity appearing in the abdomen of the Injured, he is not likely to perform normal labour work. It is relevant to note that the Injured was a labourer and now due to this accident, he can only do desk job for which he is not qualified.** It has also come in the additional evidence that there is a possibility of improvement of functional disability after the proposed surgery and Injured may not require the urine bag for his urine*



collection after the surgery. **Although, the permanent disability of the Injured has now been re-assessed to be 27%, but in the face of additional evidence, the functional disability suffered by the Injured due to this accident is assessed as 70%.**

(emphasis supplied)

14. The learned Tribunal, in the present case, while acknowledging the 77% impairment to the right lower limb, failed to assign any cogent reason or apply occupational reasoning before reducing the functional disability to 39%. No vocational expert was examined, nor was there any evidence to suggest that the appellant could secure equivalent employment in the open labour market. It is common knowledge that the employment condition in the city is not so favourable that a person with such disability may acquire a desk job.

15. Further, it is not the case of the Insurance Company that the appellant is educated or possesses any skill that would enable him to earn a livelihood equivalent to his pre-accident employment in a desk job. It is common knowledge that job opportunities for semi-skilled or unskilled individuals with such impairments are limited and not always gainful.

16. In light of the above, this Court is of the view that the appellant's functional disability for the purposes of computing loss of future earnings must be fairly and realistically be assessed at 50%, taking into account the actual impact of the injury on the appellant's ability to continue as a security guard.

17. Insofar as the contention of the learned counsel for the appellant seeking enhancement of compensation under the head of Non-



pecuniary Loss is concerned, I find no merit in the said submission. The learned Tribunal has already awarded compensation under the heads of pain and suffering, loss of amenities of life, disfigurement, and mental and physical shock, which, in the facts and circumstances of the present case, cannot be said to be either arbitrary or insufficient. The nature of the injuries, the period of hospitalisation, and the overall impact on the appellant's lifestyle have been duly considered by the learned Tribunal in computing these heads.

18. Moreover, the compensation awarded under non-pecuniary heads falls within the reasonable range of judicially accepted norms for cases involving permanent partial disability of this nature. Therefore, no further enhancement under this category is warranted.

Conclusion

19. The learned Tribunal has erred in applying a one-size-fits-all approach to functional disability, without due consideration of the appellant's profession, economic status, and realistic post-injury prospects. This enhancement is therefore warranted in law and on facts.

20. Accordingly, the present appeal is partly allowed and the matter is remanded back to the learned Tribunal for the limited purpose of re-computation of compensation under the head of 'loss of future income' after taking into account a functional disability of the appellant as 50%.



21. The finding of the learned Tribunal on all other issues, including multiplier, future prospects, computation of income, treatment and interest rate, are affirmed and shall remain undisturbed.

22. The learned Tribunal shall undertake the re-computation expeditiously, preferably within a period of four weeks from the date of the first listing of the Claim Petition before the learned Tribunal on remand. The parties shall appear before the learned Tribunal on 21.05.2025.

23. The compensation amount so determined, on remand, shall be disbursed in favour of the appellant as per the manner provided in the impugned award.

24. The appeal is partly allowed in the aforesaid terms.

AMIT MAHAJAN, J

MAY 16, 2025