



\$~11

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **FAO 383/2019 and CM APPL. 42025/2019, CM APPL. 9030/2024**

NEW INDIA ASSURANCE CO LTDAppellant
Through: None.

versus

ANUJ KUMAR & ANRRespondents
Through: Mr. R.K. Nain, Ms. Pratima N. Lakra and Mr. Chandan Prajapati, Advs. for R-1.

CORAM:
HON'BLE MR. JUSTICE DHARMESH SHARMA

ORDER

% **16.04.2025**

1. The hearing is being conducted through hybrid mode.
2. No one appeared for the appellant/Insurance Company, when the matter was called.
3. Having heard the learned counsel for the respondent No.1/claimant/injured and on perusal of the record, this Court proceeds to decide the present appeal preferred by the appellant/Insurance Company under Section 30 of the Employee's Compensation Act, 1923.
4. In a nutshell, a claim petition was filed by the respondent No.1/claimant/injured that he was deputed as a driver by the respondent No.2 and plying truck No. HR-38T-4792, which met with an accident on the intervening night of 25/26.08.2017 at about 12:30 AM under the jurisdiction of PS: Dankaur, District Gautam Buddh Nagar, Uttar Pradesh. He claimed that he has sustained disability to the extent of 30% on both legs, and his claim was allowed and the



learned Commissioner, Employee's Compensation has awarded a total compensation of Rs. 9,88,560/- with interest @ 12% p.a. from the date of accident till its realization.

5. The vehicle in question was evidently insured with the appellant/Insurance Company. However, the appellant/Insurance Company has preferred the present appeal assailing the impugned award primarily on two grounds i.e. (i) assailing the existence of relationship of employer and employee between the respondents No. 1 and 2 and (ii) also assailing that the permanent disability which was reckoned at 35% of disability has been wrongly assessed @ 100% towards loss of earning capacity.

6. Insofar as the objection with regard to the existence of relationship of employer and employee is concerned, the learned Commissioner, has rightly arrived at a conclusion that the relationship was admitted by respondent No.2 and the accident was also proven on the record substantiated by the document concerning the FIR which was recorded in respect of the accident in question. No field survey was conducted by the appellant insurance company, and if conducted, no evidence to the contrary was adduced during the inquiry.

7. Further, the evidence was also brought on the record that the respondent No.1/claimant/injured was earning monthly wages of Rs. 12,000/- per month + Rs. 200/- per day as food allowance. Learned counsel for the respondent No.1/claimant/injured has relied on the decision in **Mackinnon Mackenzie and Co. (P) Ltd. v. Ibrahim Mahmmmed Issak¹**, wherein *vide* paragraph (06) it has been held as under:-

6. In the case of death caused by accident the burden of proof rests

¹ (1969) 2 SCC 607



upon the workman to prove that the accident arose out of employment as well as in the course of employment. But this does not mean that a workman who comes to Court for relief must necessarily prove it by direct evidence. Although the onus of proving that the injury by accident arose both out of and in the course of employment rests upon the applicant these essentials may be inferred when the facts proved justify the inference. On the one hand the Commissioner must not surmise, conjecture or guess; on the other hand, he may draw an inference from the proved facts so long as it is a legitimate inference. It is of course impossible to lay down any rule as to the degree of proof which is sufficient to justify an inference being drawn, but the evidence must be such as would induce a reasonable man to draw it. Lord Birkenhead, L.C., in *Lancaster v. Blackwell Colliery Co. Ltd.* observed:

“If the facts which are proved give rise to conflicting inferences of equal degrees of probability so that the choice between them is a mere matter of conjecture, then, of course, the applicant fails to prove his case, because it is plain that the onus in these matters is upon the applicant. But where the known facts are not equally consistent, where there is ground for comparing and balancing probabilities as to their respective value, and where a reasonable man might hold that the more probable conclusion is that for which the applicant contends, then the Arbitrator is justified in drawing an inference in his favour.”

8. In view of the aforesaid proposition of law, coming to the instant appeal, suffice to state that there was no challenge by the appellant insurance company that there was no relationship of employer and employee between the parties.

9. Insofar as the issue of reckoning of permanent disability and loss of earning capacity is concerned, it was proven on the record by the respondent No.1/claimant/injured that he sustained injuries on both his legs which resulted in 35% disability as per the medical certificate issued by the Medical Board of Aruna Asaf Ali Hospital, New Delhi. Respondent No.1/claimant/injured testified without any challenge that the permanent disability has resulted in a disability to walk, sit on his heels and he is unable to mount on a transport vehicle.

10. The disability towards loss of earning capacity was rightly



reckoned at 100%, as the respondent No.1/claimant/injured had been rendered unsuitable for gaining any employment as a driver at the age of 31 years. The wages for the purposes of loss of earning capacity was reckoned at Rs. 8,000/- and accordingly the following formula was adopted to arrive at the compensation *viz.*

$$\frac{205.95 \times 8000 \times 60}{100} = \text{Rs. 9,88,560/-}$$

11. Without further ado, there is no illegality, perversity or incorrect approach adopted by the learned Commissioner in reckoning the permanent disability at 100% towards loss of earning capacity. In support of the same, reference has been invited to the decision by this Court in the case of **New India Assurance Co. Ltd. v. Moharman and Anr.**².

12. At the cost of repetition, the functional handicap which has been suffered by the respondent No.1/claimant/injured has rendered him unfit to drive a heavy motor vehicle or for that matter even a light motor vehicle since now his legs would not be in a position to put appropriate pressure on breaks, accelerator as well as clutch and he has been rendered totally unsuitable for employment as a driver in future at a very young age.

13. In view of the above, this Court finds no infirmity, illegality or perversity in the impugned order passed by the learned Commissioner, Employee's Compensation, the present appeal is dismissed.

14. The pending applications are also disposed of.

DHARMESH SHARMA, J.

APRIL 16, 2025/sp/sa

² 2024 SCC OnLine Del 430