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

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Date of Decision: 24.07.2025+ **MAC.APP. 163/2019****DHAWANI SHARDA**

.....Appellant

Through: Mr. S.N. Parashar, Advocate.

versus

**ASHOK KUMAR & ORS (NATIONAL INSURANCE
CO LTD)**

.....Respondents

Through: Mr. Manoj Ranjan Sinha & Mr.
Vishal Agrawal, Advocates for R-3.**CORAM:****HON'BLE MS. JUSTICE TARA VITASTA GANJU****TARA VITASTA GANJU, J.: (Oral)**

1. The present Appeal has been filed on behalf of the Appellant under Section 173 of the Motor Vehicles Act, 1988 against the judgment dated 02.08.2018 [hereinafter referred to as "Impugned Order"] passed by learned Presiding Officer, MACT, North West District, Rohini Courts, Delhi. The challenge in the present Appeal is for enhancement of the amount of compensation awarded in the sum of Rs.37,96,000/- along with 9% interest per annum to the injured/Appellant by the learned Tribunal.

2. Learned Counsel for the Appellant submits that he restricts his challenge in the present Appeal to one ground, that is, of reduction of disability of the Appellant. Learned Counsel submits that a disability certificate was produced before the learned Tribunal, wherein it is set out that there was a permanent disability of about 50%, despite which the learned Tribunal has reduced the disability to 20%.

2.1 Learned Counsel for the Appellant submits that the Appellant had



filed a detailed Affidavit (Ex. PW1/A) before the learned Tribunal setting out that she can neither sit, stand, walk or squat for extended periods of time. The Appellant has also stated therein that she is unable to walk, sit or squat on account of her spinal injuries and not able to work at present. It is further stated therein that the Appellant cannot drive a car either. The Appellant has also set out therein that she is required to expend amounts now to engage a driver and on her medicines as well, and that she is unable perform her job.

2.2 Learned Counsel seeks to rely upon the cross-examination of the Appellant (PW-1) in this behalf as well, wherein it is stated that although the Appellant had rejoined her services in April, 2013, after a few months of the accident, she had to resign in October, 2013 on account of the injuries sustained in the accident.

2.3 Lastly, it is contended by the learned Counsel for the Appellant that the Appellant had placed on record, in addition to her evidence, the disability certificate, as well as, had produced the Neurosurgeon from IHBAS, whose statement was recorded before the learned Tribunal. It is submitted that despite all this evidence, the finding of the learned Tribunal was to the extent of reducing the functional disability from 50% to 20%.

3. Learned Counsel for Respondent No.3/Insurance Company contends that in view of the fact that the Appellant rejoined her services from April to October, 2013, it showed that the Appellant was fit for working, and thus, the functional disability was correctly reduced by the learned Tribunal.

3.1 Learned Counsel further submits that the Appellant was standing in the Court to give evidence as can be seen from the record.

4. Briefly the facts are that on 10.11.2012, the injured/Appellant along



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with her father and daughter was travelling to Chandigarh in her car and around 7:30 AM, their car was hit on the rear side by a truck. The Appellant sustained serious injuries and was admitted to hospital, and thereafter, was shifted to the Indian Spinal Injuries Centre, Vasant Kunj, New Delhi, where she was admitted for about a month. Due to the injuries suffered, the Appellant became disabled to the extent of 50% in respect of her locomotor system and neurological system and sustained weakness in both her arms and legs. A criminal case was registered against the driver of the offending truck for rash and negligent driving.

4.1 As stated above, the Appellant produced her evidence as well as the evidence of her employer (PW-2) including the disability certificate (Ex. PW-4/1) of the doctor in this behalf. The Appellant has stated in her Affidavit that prior to the accident, she was an able-bodied person and she was capable of driving a car and used to work in a company called M/s A.A. Associates as an Area Sales Manager and was getting a salary of Rs.55,000/- per month.

4.2 The Appellant has further averred that after the accident, she had not been able to continue with her services and instead had to engage a driver to drive a car at the rate of Rs.12,000/- per month as well as an attendant for a period of two years after the accident. The Appellant has also deposed that, because of the accident, she is unable to conceive and cannot even go about performing her daily routine tasks.

4.3 Paragraphs 6, 7 and 8 of the evidence of Appellant (PW-1) are set out below:

“6. That the deponent was possessing a very good health and physique at the time of accident, at the time of accident, the deponent was doing her



Priyate Job with A.A. Associate, 10, Visawa, Utkatsha Co-Op. HSG Soc., State bank of Colony, Maharashtra, as area sales manager at Delhi and her salary Rs.55,000/- p.m. at the time of accident. It is also mentioned here that the deponent has to resign from the above said company due to sustained grievous Spinal injuries in this accident and she is unable to walk, sit and squatted as well as restricted to movement of body on account of spinal injuries not even this she is not capable to do work at present. It is also submitted that at the time of accident the deponent driving the Car and having valid driving license but at present at present is unable to drive any vehicle on account of this injuries, it is also mentioned here that she has to engaged a driver on his car for her personal works as well as Hospitals to take medicine and she is giving salary Rs.12,000/- p.m. to the driver as yet. Therefore, the deponent is suffered a lot of losses towards income/future prospectus income, an account of the injuries in the said accident. The deponent engaged a Attendant for daily routine work complete two years and she had given salary Rs. 5000/- per month to the attendant to the above said period.

7. That the deponent is married wife about 27 Years at the time of accident and she is unable to conceived pregnancy as well as also facing problems to release Urine and Stool also as well as she cannot make grip on hand and at present she is also suffering from breathing problem because her lungs got comprised during this accident till date. The deponent suffered a lot of problems in her future as her daily routine work has been badly affected as per the doctor advice, the deponent took physiotherapy treatment from the doctor Sh. Randhir Lal Ranjan at 69, Sector-1, Pocket-1, Dwarka New Delhi after discharge from the hospital for the period of 02 years and she has spent Rs.1,00,000/- towards physiotherapy treatment, the attested copy of the physiotherapy as well as other expenses will are annexed with affidavit. It is also submitted here that the deponent has not suffered any financial loss on account of the injuries sustained by her but the injuries certainly have put him under mental agony and physical pain and suffering from long time.

8.. That the deponent suffered permanent disability above 50% in her whole body. The Disability Certificate Issued by IHBAS Hospital, Delhi, which is placed on the file.”

4.4 In addition, the evidence of PW-2, the Manager of the Appellant has proved the salary of the Appellant. The Manager also deposed as to the dates of leave of the Appellant and that she had to resign from her services.

4.5 The Appellant also placed on record the certificate of disability (Ex. PW-4/1) dated 02.10.2024, which sets out the following:



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“The patient Dhawani Sharma was examined by the Disability Medical Board for neurological disabilities at IHBAS on 29.09.2014. Patient is a case of cervical spine injury due to road traffic accident in November 2012 and operated for cervical spine fixation at private hospital (on 12.11.2012). At present, patient is quadriparetic (Grade 4/5) below C-5 level and her neurological disability is about 50%.”

4.6 In addition, the Appellant also produced the examining Doctor [PW-4] who has proved the disability certificate and deposed that the Appellant sustained permanent disability of about 50% in the locomotor system and neurological system. The Doctor has also deposed that the Appellant has sustained weakness in both her arms and legs and has difficulty in performing normal routine activities.

5. The disability certificate of the Appellant is not disputed and is proved in accordance with law. However, the learned Tribunal has given a finding that since the Appellant has rejoined her previous job on 01.04.2013 and continued to work till 05.10.2013, she may have faced some difficulty but the Appellant was not prevented or restricted from discharging her previous functions. This finding relies on the fact that the Appellant was not forced to either resign or was expelled from her services because of the accident. Thus, the learned Tribunal has deemed it apposite to reduce the functional disability of the Appellant to 20%. The relevant extract of the Impugned Order is set out below:

*“PW2 who was a manager from said A.A. Associates deposed in his cross examination that as per report, the petitioner remained on leave from 11.11.12 to 31.03.2013, she **rejoined her duties on 01.04.2013, she remained with the company till 05.10.2013** and thereafter she resigned from her services,*

There is nothing on record to suggest that due to the injuries sustained in the accident, the petitioner was prevented or restricted from discharging her previous activities and functions and rather, it has been proved on record that she after her accident on 10.11.2012



she rejoined her duties on 01.04.2013 and continued till 05.10.2013. It would show that she rejoined her duties after about 5 months of the accident and in fact continued for about 6 months in her previous job and thereafter resigned from her services. There is nothing on record to suggest that she was either expelled or forced to resign from her service by the said company due to her accident. No question in this regard has been put by the petitioner to PW2. On the contrary, PW2 has specifically deposed in his cross examination that she rejoined her duties on 01.04.2013, was with the company till 05.10.2013 and **thereafter she resigned from her service. PW1 in her cross examination has also deposed that she was not removed from her duty by her employer.**

In the said circumstances, due to the said permanent disability, she would have faced some difficulty while doing her previous work but the petitioner was not prevented or restricted from discharging her previous activities and functions.

In view of above discussion, **the injuries suffered by the petitioner and her nature of work, the functional disability of the petitioner in relation to her whole body and the effect of permanent disability on her actual earning capacity is taken as 20%.**

The copy of passport and PAN card of petitioner is on record which mentions her date of birth as 08.05.1985 which shows that the petitioner was aged about 27 years 6 months at the time of accident.”

[Emphasis Supplied]

6. As stated above, the Appellant proved, basis of the Doctor's certificate as well the evidence, that her disability was 50%. It was proved on record that she had reduced functioning in both her arms and legs. The Appellant had deposed that she is not able to drive a car and go about her routine activities in the manner she was.

7. The law on functional disability and how it has to be ascertained has been discussed by the Supreme Court. In the case of ***Aabid Khan v. Dinesh and Ors.***¹, the Supreme Court held that the Tribunal or High Court cannot give a finding of reduction of the disability without giving cogent reasons

¹ (2024) 6 SCC 149



and in the absence of any contrary evidence available on record. The relevant extract of *Aabid Khan* case is below:

“5. Perusal of the award passed by the tribunal as modified by the High Court, would reveal that claimant had sustained compound fracture in the left acetabulum and left rib. Dr. Alok Mehta (PW-5), who had examined the claimant had deposed that whole body disability suffered by the claimant was to the extent of 17% and this fact has been elicited in the cross-examination. However, the tribunal computed the compensation towards loss of future income by considering the whole body disability at 10%. **On surmises and conjectures the percentage of disability has been reduced. No reason whatsoever has been assigned by the tribunal for substituting its opinion to that of the expert opinion namely, the doctor who treated the claimant and examined as PW-5.**

6. This Court in the case of *Raj Kumar v. Ajay Kumar and Another*, (2011) 1 SCC 343 has observed:

“16. The Tribunal should not be a silent spectator when medical evidence is tendered in regard to the injuries and their effect, in particular, the extent of permanent disability. Sections 168 and 169 of the Act make it evident that the Tribunal does not function as a neutral umpire as in a civil suit, but as an active explorer and seeker of truth who is required to “hold an enquiry into the claim” for determining the “just compensation”. The Tribunal should therefore take an active role to ascertain the true and correct position so that it can assess the “just compensation”. While dealing with personal injury cases, the Tribunal should preferably equip itself with a medical dictionary and a handbook for evaluation of permanent physical impairment (for example, *Manual for Evaluation of Permanent Physical Impairment for Orthopaedic Surgeons*, prepared by American Academy of Orthopaedic Surgeons or its Indian equivalent or other authorised texts) for understanding the medical evidence and assessing the physical and functional disability. The Tribunal may also keep in view the First Schedule to the Workmen's Compensation Act, 1923 which gives some indication about the extent of permanent disability in different types of injuries, in the case of workmen.”

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9. In the light of the afore-stated position of law explained when the medical evidence tendered by the claimant is perused, **we are of the considered view that tribunal and the High Court committed a serious error in not accepting the said medical evidence and in the absence of any contra evidence available on record, neither the tribunal nor the High Court could have substituted the disability to 10% as against the opinion of the doctor (PW-5) certified at 17%. In that view of the matter the compensation awarded under the head ‘loss of income’ towards permanent disability deserves to be enhanced by construing the whole-body disability at 17%.**”

[Emphasis Supplied]



7.1 In the case of *Prakash Chand Sharma v. Rambabu Saini and Anr.*², it was held that the Tribunal cannot unilaterally question or reduce the disability percentage without following the proper procedure. The relevant paragraphs of the abovementioned case are extracted below:

“8. We find force in the submissions of the appellant. The duly constituted Medical Board has ascertained the permanent disability of the claimant-appellant to be 100%.

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9. The Tribunal questioned the competence of the Medical Board to assess the permanent disability of the claimant-appellant, terming the certificate of the Medical Board as not completely reliable. If the Tribunal had reason to doubt the medical certificate, the option available before it was to have the disability re-assessed but it could not have gone into the details of the determination of disability. Since that course of action has not been adopted, the opinion of the Medical Board, being an opinion of the experts is to be treated as such. That apart, the comatose state of the claimant-appellant is not in dispute.”

[Emphasis Supplied]

8. Emphasis was laid by the learned Counsel for the Respondent on the fact that the Appellant had admitted, in the cross examination of PW1/Petitioner, that she was standing in Court without any help while giving evidence, thus she would be able to perform her job/duties.

9. This Court is unable to agree. The Appellant was previously working in a sales job, although did attempt to continue with her job, but was clearly unable to do so, and thus, had to resign from the job. The finding of the Doctor has not been disputed. No doubt, the Appellant was standing in the Court while giving her evidence, however, this is not something which has been used by the learned Tribunal in the Impugned Award. The Impugned Order premises itself on the basis of her rejoining services for a period of

² 2025 SCC Online SC 276



approximately six months.

10. The deposition of the PW-4 [Doctor] reflects that the permanent disability of the Appellant is 50% of the locomotive system and the neurological system. The Appellant had deposed that although she did rejoin her job, she was not able to perform her duties because of her injuries and had to resign from her job.

11. The evidence of the Appellant that she could not perform her day-to-day activities nor conceive nor drive a car has also not been controverted by the Respondent No.3/Insurance Company.

11.1 It is also not disputed that the accident took place on 10.11.2012 and Appellant joined her duties only on 01.04.2013, after a few months of being in recovery. The Appellant was stated to be working as a sales representative. She has stated that she is unable to drive her car anymore in view of the accident. She has also stated that she has difficulty in performing her routine and day-to-day activities including the passage of urine and bowl movements and is also suffering from breathing issues. No documents or evidence forms part of the record to controvert this evidence of the Appellant. The disability was assessed as both physical and neurological.

12. In light of the medical evidence tendered by the Appellant and the settled principles of law in this behalf, the finding of reduction of the claimant's functional disability cannot be sustained.

13. The Appeal is accordingly allowed. The Impugned Award to the extent that it reduces the functional disability from 50% to 20% is set aside. The functional disability, as is stated by the Doctor and in the medical record, shall now be taken as 50%.



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14. The parties shall appear before the learned Tribunal on 20.08.2025 for re-calculation of the awarded amount in terms of the judgment passed today.
15. The parties shall act based on the digitally signed copy of the order.

TARA VITASTA GANJU, J

JULY 24, 2025/ ha