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

% **Judgment reserved on: 27 March 2025**
**Judgment pronounced on : 17 April 2025**

\+ FAO 149/2022 & CM APPL. 24971/2022

THE NATIONAL INSURANCE CO. LTD. ….Appellant
Through: Mr. Pankaj Seth, Adv.

versus

HARENDRA SINGH @ HARENDRA CHAUDHARY & ANR.
....Respondents
Through: Mr. R.K. Nain and Mr. Chandan Prajapati, Adv. for R-1.

**CORAM:**
**HON'BLE MR. JUSTICE DHARMESH SHARMA**

**J U D G M E N T**

**DHARMESH SHARMA, J.**

1. This appeal has been preferred by the appellant/insurance company assailing the impugned order/judgment dated 13.10.2021 passed by the learned Commissioner, Employees' Compensation, North-District, New Delhi ["**Commissioner**"], whereby the claim for compensation filed by the respondent No. 1/claimant/workman was allowed, granting a total compensation of Rs. 10,33,344/-, along with a penalty amount of Rs.2,58,336/- under section 4A(3)(b) of the Employees' Compensation Act, 1923[1], payable with interest @ 12%

[1] EC Act

per annum with effect from 25.07.2015 till its realization. The liability for payment was fastened upon the shoulders of the appellant/insurance company.

**FACTUAL MATRIX:**

2. Shorn off unnecessary details, admittedly, the respondent No.1/claimant/Sh. Harendra Singh @ Harendra Chaudhary, S/o Sh. Ranvir Singh, was employed as a driver of vehicle bearing registration number HR-55-J-5412, a truck owned by Sh. Nikhil Gill/Respondent No. 2. On 25.06.2015, the vehicle was engaged on a business trip from Meerut to Pune (Maharashtra), carrying a consignment of sports (gym) goods, with the claimant designated as the driver. At approximately 7:30 P.M., while operating the vehicle near Nanoo, Hathras Road, a truck approaching from the opposite direction collided with the vehicle driven by the claimant.

3. As a result of the collision, the respondent No. 1/claimant sustained grievous injuries, particularly to his right leg, right hand, and jaws; the vehicle also sustained damage. Suffice it to state that, after prolong medical treatment, the injuries resulted in causing permanent disability, notably shortening of the respondent No.1/claimant's right leg by approximately one inch, rendering him incapable of sitting properly. The respondent No. 1/claimant asserted that he incurred substantial medical expenses and had become 100% disabled for the purpose of his employment as a driver, resulting in a total loss of earning capacity.

4. The vehicle in question was insured with the appellant/insurance company under Policy No. 36050031146300002766, valid from 01.09.2017 to 31.08.2018, in the name of Sh. Nikhil Gill/Respondent No. 2. It is pertinent to note that the appellant/insurance company had charged an additional premium from the insured under the provisions of the Employees' Compensation Act, 1923.

5. In light of the aforesaid incident, respondent No. 1/claimant instituted a Claim Petition before the learned Commissioner, Employees' Compensation, seeking compensation for the injured Harendra Singh. The learned Commissioner, Employees' Compensation (District-North-West) framed the following issues for adjudication:

i. Whether Employee-Employer relationship exists between the parties?
ii. Whether accident resulting into injury to claimant is caused out of and during the course of employment and if so, to what amount of injury compensation, the claimant is entitled to?
iii. Whether penalty is imposable u/s-4A (3) and if so the quantum thereof?
iv. Relief if any?

6. It is borne out from the record that respondent No. 2, in his evidence by way of affidavit and written statement, stated that he is the registered owner of the vehicle bearing No. HR-55J-5412. He unequivocally denied that the said vehicle was involved in any accident on 25.06.2015, either in Delhi or at any other location within India, while the respondent No. 1/claimant was

employed as a driver on the relevant date, he abandoned the vehicle on the roadside and left for his village without prior intimation to the owner; and that despite repeated attempts to establish contact, the respondent No. 1/claimant failed to respond to phone calls, thereby compelling respondent No. 2 to engage an alternate driver to ensure the completion of the vehicle's journey to its intended destination. It was specifically contended that, as no accident involving the vehicle occurred and no damage was sustained, there was no occasion to lodge an FIR[2] or to raise an insurance claim. Respondent No. 2 herein further deposed that, based on information gathered from villagers residing in the respondent No. 2/claimant's locality, the respondent No. 1/claimant allegedly met with an accident involving another vehicle while traveling on his motorcycle to his home, as a result of which he required medical treatment.

7. The appellant/insurance company too pleaded that the respondent No. 1/claimant's assertion of sustaining multiple injuries due to a collision with another vehicle was unfounded, pointing out that the owner of the said vehicle had already filed a case, which itself indicates that the present claim is fabricated. Furthermore, in the event of a collision, there would necessarily be damage to the vehicle; however, no claim for OD[3] had been lodged suggesting a collusion between the Claimant and the vehicle owner.

[2] First Information Report
[3] Own Damage

## IMPUGNED ORDER/JUDGMENT

8. In short, the learned Commissioner, *vide* order dated 13.10.2021, answered Issue Nos.1, 2 ,3 & 4 in favour of the respondent No. 1/claimant to the effect that the injuries were sustained by him during the course of his employment and assessed his wages @ Rs.8,000/- per month, plus Rs. 200/- per day as food allowance, and finding that he was 26 years of age at the time of the accident, the compensation was calculated as under: -

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| Relevant factor for 26 years | : | 215.28 |
| 60% of wages @ Rs.8,000/- p.m | : | Rs. 4800/- |
| Amount of compensation<br>**$\frac{215.28 \times 8000 \times 60}{100}$** | : | **Rs.10,33,344/-** |

9. Accordingly, a total compensation of ₹10,33,344/- was awarded, along with simple interest as per Section 4(A) of the E.C. Act at the rate of 12% per annum effective from 25.07.2015, i.e., the date of the incident, until the date of payment. Additionally, a penalty of Rs. 2,58,336/- under Section 4A (3)(b) of the E.C. Act were also awarded.

10. The appellant/insurance company was further directed to remit the total awarded sum via pay order in favor of the "Commissioner, Employees' Compensation" within 30 days from the date of the said order. In compliance, the appellant/insurance company deposited Demand Draft/Cheque No. 059582 dated 20.04.2022 for an amount of Rs. 18,68,739/-, which was duly credited to the account of the Commissioner, Employees' Compensation, District North, State Bank of India, Sri Nagar Colony, Bharat Nagar, Ashok Vihar, Delhi-110052.

Subsequently, the appellant/insurance company filed an application seeking the issuance of a certificate of deposit for the said amount.

**GROUNDS IN THE PRESENT APPEAL**

11. The principal grounds for challenging the impugned award dated 13.01.2021 raised by the appellant/insurance company are as follows:

i. That the learned commissioner disregarded the owner's written statement, which stated that the claimant abandoned the truck and was later involved in a motorcycle accident unrelated to his employment.
ii. That the learned commissioner lacked jurisdiction to entertain the claim.
iii. That there was no proof that the truck was involved in any accident, as no damage was reported or an Own Damage claim filed with the insurance company.
iv. That there was insufficient evidence to substantiate the claimant's case.
**v.** That the appellant/ insurance company is not liable to pay penalty u/s 4A of EC Act.

**ANALYSIS AND DECISION**

12. I have given my thoughtful consideration to the submissions advanced by the learned counsels for the parties at the Bar. I have also perused the relevant record of the case. Upon careful examination of the above facts, I find that the present appeal is bereft of any merits. The basis for the conclusion arrived at is discussed hereinbelow: -

**-RELATIONSHIP OF EMPLOYER AND EMPLOYEE**

13. Insofar as the challenge raised by the appellant/insurance company to the finding recorded by the learned Commissioner

regarding the existence of an employer-employee relationship between respondents No.2 and 1 respectively is concerned, the same is bereft of any merit. Indeed, the initial burden of proving the relationship of employer and employee lies upon the respondent No. 1/claimant; however, the evidence may or not be direct. In order to demonstrate such relationship, the learned Commissioner was competent to examine the factual narrative as well as the broad circumstances of the case, and an inference could be drawn regarding the existence of such relationship.

14. In the instant case, it was not the case of the respondent No.2 that respondent No1/claimant was not his employee at all. The only defence taken was that he had been engaged on a casual basis; however, even if that were so, respondent No.1/claimant would nonetheless fall within the definition of an 'employee' by virtue of Schedule-II (Clause-i) read with explanation XLV of the EC Act, as he was employed as a driver. The respondent No.2/employer did not substantiate his assertion that respondent No1/claimant had abandoned the truck and had met with an accident elsewhere. No inquiry to that effect was even conducted by the appellant/insurance company, nor was any evidence led by them to establish that the employer-employee relationship did not exist. Further, no evidence was brought on record to show that the vehicle in question was not involved in an accident on 25.06.2015. Evidently, even the appellant/insurance company had made payment towards the damages sustained by the insured vehicle after the accident.

- **LIABILITY OF THE INSURER U/S 4-A OF THE EMPLOYEES COMPENSATION ACT:**

15. In the case of **Ved Prakash Garg v. Premi Devi**[4], relied upon by the appellant/insurance company, the Supreme Court laid down the proposition of law as under: -

> "….In other words the insurance company will be liable to meet the claim for compensation along with interest as imposed on the insured employer by the Workmen's Commissioner under the Compensation Act on the conjoint operation of Section 3 and Section 4-A sub-section (3)(*a*) of the Compensation Act. So far as additional amount of compensation by way of penalty imposed on the insured employer by the Workmen's Commissioner under Section 4-A(3)(*b*) is concerned, however, the insurance company would not remain liable to reimburse the said claim and it would be the liability of the insured employer alone". {para 19}

16. However, it is also pertinent to mention that the Supreme Court, in the same judgment, considered the decision in ***Oriental Fire and General Ins. Co. Ltd. v. Nani Bala***[5], wherein the High Court of Judicature at Guwahati had to consider the question whether any liability could be imposed upon the insurer of the offending vehicle which had caused accidental injury to the employees of the insured employer. It was decided in the said case, based on a conjoint operation of the Motor Vehicles Act, 1988, and the Employees' Compensation Act, 1923, that the provisions of the Compensation Act cannot be viewed in isolation when the Motor Vehicles Act specifically stipulates that a policy of insurance cannot exclude liability arising under the

[4] (1997) 8 SCC
[5] [1987 ACJ 655 (Gau)]

Compensation Act, and that the expression "*any person*" must be construed to include an insurer as well.

17. The supreme Court also cited with approval the decision in **United India Insurance Co. Ltd. v. Roop Kanwar**[6], wherein a learned Single Judge of the Rajasthan High Court considered a situation where, upon payment of an additional premium, the insurance company had agreed, in light of Endorsement No. 16 of the policy, to cover all liabilities incurred by the insured under Employees' Compensation Act. It is significant to note that recognizing the primacy of the contractual coverage of liability by the insurance company in that case, it was held that the insurance company was liable to satisfy the claim for penalty and interest as imposed upon the insured under Section 4-A(3) of the Compensation Act.

18. Incidentally**,** in the case of **New India Assurance Co. Ltd. v. Harshadbhai Amrutbhai Modhiya**[7], although in the context of the EC Act, it was opined as under:

> "24. … It is not brought to our notice that there is any other law enacted which stands in the way of an insurance company and the insured entering into a contract confining the obligation of the insurance company to indemnify to a particular head or to a particular amount when it relates to a claim for compensation to a third party arising under the Workmen's Compensation Act. In this situation, the obligation of the insurance company clearly stands limited and the relevant proviso providing for exclusion of liability for interest or penalty has to be given effect to. Unlike the scheme of the Motor Vehicles Act the Workmen's Compensation Act does not confer a right on the claimant for compensation under that Act

[6] [1991 ACJ 74 (Raj)]
[7] [(2006) 5 SCC 192

> to claim the payment of compensation in its entirety from the insurer himself."

19. Thus, elementary as it may seem, the law relating to contracts of insurance is part of the general law of contract. A contract of insurance must, in the first instance, be construed from the terms employed therein, which terms are themselves to be understood in their primary, natural, ordinary and popular sense[8].A policy of insurance, therefore, is to be construed like any other contract. Upon a proper construction of the insurance contract in the present case, it is clear that the insurer had undertaken liability for payment of interest and penalty, if any, under the Employees' Compensation Act.

20. In view of the aforesaid proposition of law, coming to the instant matter, it is pertinent to mention here additional premium had been charged by the appellant/insurance company from respondent No.2 of Rs. 300/- (WC for employee), and therefore, appellant/insurance company cannot escape its liability to pay compensation towards penalty under Section 4-A (3) (b) of the EC Act.

- **DISABILITY @100%**

21. In order to decide this plea, it would first be expedient to refer to Section 4 of the EC Act, which provides as follows:

> **"4. Amount of compensation.**—(1) Subject to the provisions of this Act, the amount of compensation shall be as follows, namely:—
> (a) ……..not relevant;

[8] Colin Vaux's Law of Insurance, 7th Edition Para 2-01

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| (b) where permanent total disablement results from the injury | an amount equal to [2][sixty per cent.] of the monthly wages of the injured [3][employee] multiplied by the relevant factor;<br>or<br>an amount of [6][one lakh and forty thousand rupees], whichever is more: |

[1][Provided that the Central Government may, by notification in the Official Gazette, from time to time, enhance the amount of compensation mentioned in clauses (a) and (b);]

*Explanation I.*—For the purposes of clause (a) and clause (b), "relevant factor", in relation to [2] [an employee] means the factor specified in the second column of Schedule IV against the entry in the first column of that Schedule specifying the number of years which are the same as the completed years of the age of the [3][employee] on his last birthday immediately preceding the date on which the compensation fell due.

[4][* * * **]

| | |
|---|---|
| (a) ……..not relevant; | |
| (b) where permanent total disablement results from the injury | an amount equal to [5][sixty per cent.] of the monthly wages of the injured [3][employee] multiplied by the relevant factor;<br>or<br>an amount of [6][one lakh and forty thousand rupees], whichever is more: |
| (c) where permanent partial disablement results from the injury | (i) in the case of an injury specified in Part II of Schedule I, such percentage of the compensation which would have been payable in the case of permanent total disablement as is specified therein as being the percentage of the loss of earning capacity caused by that injury; and |

| | |
|---|---|
| | (ii) in the case of an injury not specified in Schedule I, such percentage of the compensation payable in the case of permanent total disablement as is proportionate to the loss of earning capacity (as assessed by the qualified medical practitioner) permanently caused by the injury; |

*Explanation I.*—Where more injuries than one are caused by the same accident, the amount of compensation payable under this head shall be aggregated but not so in any case as to exceed the amount which would have been payable if permanent total disablement had resulted from the injuries.

*Explanation II.*—In assessing the loss of earning capacity for the purposes of sub-clause (ii), the qualified medical practitioner shall have due regard to the percentages of loss of earning capacity in relation to different injuries specified in Schedule I;

| | |
|---|---|
| (d) where temporary disablement, whether total or partial results from the injury | a half-monthly payment of the sum equivalent to twenty-five per cent. of monthly wages of the [3][employee], to be paid in accordance with the provisions of sub-section (2). |

[5][(2A) The employee shall be reimbursed the actual medical expenditure incurred by him for treatment of injuries caused during the course of employment.]"

22. It would further be relevant to refer to Section 2(g) of the E. C. Act which *inter alia* defines 'partial disablement' apart from Section 2(l) of the E. C. Act, which defines 'total disablement' as under:

> "2(g) "partial disablement" means, where the disablement is of a temporary nature, such disablement as reduces the earning capacity of a 2 [employee] in any employment in which he was engaged at the time of the accident resulting in the disablement, and, where the disablement is of a permanent nature, such disablement as reduces his earning capacity in every employment which he was capable of

> undertaking at that time: provided that every injury specified 3 [in Part II of Schedule I] shall be deemed to result in permanent partial disablement;
> 2(l) "total disablement" means such disablement, whether of a temporary or permanent nature, as incapacitates a2 [employee] for all work which he was capable of performing at the time of the accident resulting in such disablement:"

23. A careful perusal of the aforesaid provisions read with Parts-I and II of Schedule-I vis-à-vis Section 2(g) and (l) of the E.C. Act would show that where "permanent partial disability" is claimed, vide Explanation II to Section 4(c) of the E.C. Act, the medical practitioner shall have due *regard to the percentages of loss of earning capacity in relation to different injuries specified in the Schedule-I for the purposes of assessment of loss of earning capacity*. Further, whereas Part-I specifies the injuries which would be deemed to result in 'permanent total disablement', Part-II specifies injuries which would be deemed to result in 'permanent partial disablement'. *The distinction is very thin, but real to the effect that while permanent disablement is 100% disablement, permanent partial disablement is only the disablement to the extent specified in the schedule.*

24. Eschewing a lengthy academic discussion, it would be apposite to examine a few decisions rendered by the Supreme Court on the subject of assessment of loss of earning capacity upon sustaining permanent disability. In the case of ***Raj Kumar v. Ajay Kumar & Anr.***[9], the victim had sustained fracture of both bones of the left leg as well as

[9] (2011) 1 SCC 343

the left radius, and admittedly remained under prolonged medical treatment. Although the medical certificate indicated that the victim has suffered permanent disability to the extent of 45%, the learned Tribunal assessed the loss of earning capacity to be 100%. It is in this context that the following observations of law, which have remained unaltered to date, were made, and which are extracted hereinbelow:

> **"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." {bold portions emphasized}**

25. The principles laid down in ***Raj Kumar (supra)*** that were summarized are as follows:

> **"19.** We may now summarise the principles discussed above:
>
> (*i*) All injuries (or permanent disabilities arising from injuries), do not result in loss of earning capacity.
>
> (*ii*) The percentage of permanent disability with reference to the whole body of a person, cannot be assumed to be the percentage of loss of earning capacity. To put it differently, the percentage of loss of earning capacity is not the same as the percentage of permanent disability (except in a few cases, where the Tribunal on the basis of evidence, concludes that the percentage of loss of earning capacity is the same as the percentage of permanent disability).
>
> (*iii*) The doctor who treated an injured claimant or who examined him subsequently to assess the extent of his permanent disability can give evidence only in regard to the extent of permanent disability. The loss of earning capacity is something that will have to be assessed by the Tribunal with reference to the evidence in entirety.
>
> (*iv*) The same permanent disability may result in different percentages of loss of earning capacity in different persons,

depending upon the nature of profession, occupation or job, age, education and other factors."

26. In the case of **Pratap Narain Singh Deo v. Srinivas Sabata**[10], a decision rendered by a Bench of four judges of the Supreme Court, the Court considered a case wherein the victim, employed as a carpenter, met with an accident resulting in the amputation of his left arm from the elbow. The injury was held to be 'total disablement' within the meaning of Section **2(l)** of the E.C. Act and it was observed that amputation of the left hand above the elbow has rendered the workman 'unfit' for performing work as a carpenter, as carpentry work cannot be done with one hand only and the decision to adjudge 100% loss of earning capacity was upheld.

27. In the case of ***National Insurance Co. Ltd. v. Ranjit Singh @ Rana***[11]**,** the victim was a driver by profession and he sustained permanent disability to the extent of 50% while the learned Commissioner assessed the loss of earning capacity to the extent of 100%. This Court relying on the decision in the case of **State of Gujarat v. Rajendra Khodabhai Deshdia & Anr**.[12], ***Pratap Narain Singh Deo (supra)***, **Rayapati Venkateswar Rao v. Mantai Sambasiva Rao & Anr.**[13] and **G. Anjaneyulu v. Alla Seshi Reddy & Anr.**[14]**,** upheld the decision by the learned Commissioner to the effect

[10] (1976) 1 SCC 289
[11] 2009 SCC OnLine Del 3826
[12] 1991 ACJ 638
[13] 2001 ACJ 2105
[14] 2002 ACJ 1392

that "***the operation of right leg had been impaired that would render the workman not in a position to drive any heavy vehicle like truck/bus and therefore, functional disability has been correctly assessed @ 100%"***.

28. In the case of ***National Insurance Co. Ltd. v. Hari Om***[15], the workman was employed as a driver, who sustained injuries in the nature of Compound Fracture Shaft Femur Rt. with Communicated Intra-articular Fracture Rt. Knee of upper and of Tibia and Fibula with large degloving injury Lt. leg with fracture base of Rt. 1st Metatarsal with fracture of lateral nasal bone with multiple lacerated wounds. Although medical disability was assessed as 30% permanent in nature, the loss of earning capacity assessed as 100% by the learned Commissioner was upheld.

29. In ***Mohan Soni v. Ram Avtar Tomar***[16], the victim was earning his livelihood as a cart puller, and the accident resulted in the amputation of his left leg below the knee. The Supreme Court did not approve the decision of the learned Tribunal and the High Court, which had limited the loss of earning capacity to 50% merely because the victim was a cart puller. The observations referred to in the case of ***Raj Kumar (supra)*** were cited with approval, and the functional disability was held to be as high as 100% but in no case less than 90%. **What is to be underlined** is that it was observed by the Supreme Court that "*the*

[15] 2011 SCC OnLine Del 328
[16] 2012 (2) SCC 267

*estimation of functional disability and its effect on nature of work being performed by the victim suffering from such disability may be different and affect two different persons in different ways"*. It was also observed that "*while estimating functional disability, the Court should refrain from considering hypothetical factors like possibility of change of vocation or adoption of another means of livelihood*". It was held that "*scaling down of compensation could only be done when some tangible evidence is on the record and not otherwise*".

30. The decision in ***New India Assurance Co. Ltd. v. Mohd. Ajmer & Anr.***[17], is one where the victim was a driver, and although the physical disability in his right lower limb was medically assessed at 30%, the functional disability was held to be 100%. This Court referred to the decision by the Supreme Court in ***Mohan Soni (supra)***, wherein it was held that "*in the context of loss of future earning, any physical disability resulting from an incident has to be judged with reference to the nature of work being performed by a person suffering the disability. This is the basic premise and once that is grasped, it clearly follows that the same injury or loss may affect two different persons in different ways*". This Court also referred to the decision in ***Reliance General Insurance Co. Ltd. v. Bikramjit Singh & Anr.*** [18] ***(supra)***, wherein it was observed as under:

> "The appellant's argument is untenable because what has to be examined is whether the physical disability results in such a

[17] 2018 SCC OnLine Del 9158
[18] FAO No. 24204/2016 decided on 01.05.2018

disability that would render the injured party unable to discharge functions of employment which he/she was doing earlier i.e. the degree of functional disability would form the basis for assessing compensation. The driver has 31% physical disability in the right lower limb and that would obviously render him unable to drive a motor vehicle or a goods carrier as the right leg is used primarily for acceleration and applying the brake, the two most important aspects of a motor vehicle in motion.

**If there is an impairment to such a degree, then it would compromise the safe driving of the vehicle, therefore, it could well be determined as 100% functional disability.** Hence, 31% disability in the right leg can easily be equated as 100% disability for a driving.

Since, there was a doubt about the extent of disability suffered by the claimant, the Commissioner, Employees' Compensation had referred the case for ascertainment of the disability to the Medical Board of Aruna Asaf Ali Hospital, Delhi, a government owned and run hospital. The said Medical Board comprising three doctors, by a Certificate dated 13.09.2013, Exhibit AW 1/2 has certified that the claimant's case was of proximal femur (right) resulting in physical disability of 31% in the right lower limb.

Keeping this Certificate in mind, the impugned order relied upon the judgment of this Court in National Insurance Co. v. Hari Om, 2011 LLR-428 that loss of earning capacity of the driver was assessed as 100% even though his physical disability was only 20%-25%. Similarly, in National Insurance Co. Ltd. v. Shri Ranjit Singh@ Rana FAO No. 246/2007 delivered on 26.11.2009 again considered the physical disability of 15% as 100% functional disability. In the present case, however, the disability is 31% in the right lower limb which obviously would compromise safe driving of any motor vehicle. **The employment of a driver suffering from such a severe physical disability is a too remote, indeed almost negligible. Therefore, would have to be treated as a 100%**

**functional disability entitling the claimant to the award which has been granted."**

(ii) Raj Kumar v. Ashok Kumar & Bros. (FAO No. 498/2016), decided on 19.04.2017, which held that:-

> "7. The appellant is present in person in view of the directions of a learned Single Judge of this Court dated 15.12.2016. It is seen that the appellant is walking with a stick and the left lower limb is in such a condition that obviously appellant will be no longer be able to perform the duty of a driver. Though, the medical certificate may only call the disability as 23% disability, really the disability is 100% because appellant cannot perform the duty of a driver, and this is so held by the Supreme Court in the case of Pratap Narain Singh Deo (*supra)* referred to above."
>
> **{bold portions emphasized}**

31. The aforesaid evolution of compensatory jurisprudence over the years settles the issue of assessment of loss of earning capacity. However, I shall lastly refer to decision in **Sri Chanappa Nagappa Muchalagoda v. D.M. New India Insurance[19],** wherein the workman, a driver of heavy vehicles aged about 33 years, suffered serious injuries to his right leg, including an anterior cruciate ligament tear and a collateral ligament tear, and underwent plastic surgery that resulted in permanent disability, which was medically opined to be 37%. The Supreme Court, while referring with approval to its decision in ***Raj Kumar (supra)*** and certain other decisions, affirmed the judgment of

[19] 2020 (1) SCC 796

the High Court assessing the functional disability of the appellant as 100%.

32. In view of the foregoing discussion, the present appeal is dismissed.

33. The pending application also stands disposed of.

**DHARMESH SHARMA, J.**

**APRIL 17, 2025**
*Sadiq*