



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

% Date of Decision: 26.02.2026

+ **FAO 200/2023, CM APPL. 40661/2023 and CM APPL. 2013/2026**

NATIONAL INSURANCE COMPANY LIMITED Appellant

Through: Mr. Shubham Sharma, Mr. Sumit Prasad, M. Shagun Shahi and Mr. Deepansh Sharma,
Advocates

versus

BIRENDER KUMAR TIWARI & ANR. Respondents

Through: Mr. Nitesh Kumar and Mr. Mayank Goswami, Advocates for respondent No.1
Mr. Shwetank Sharma, Advocate for respondent No.2.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT (ORAL)

1. The present appeal has been filed under Section 30 of the Employees' Compensation Act, 1923 (hereinafter referred to as the "Act"), against the order dated 31.05.2023 passed by the learned Commissioner, Labour Department, Government of NCT of Delhi.

2. Vide the impugned order, the learned Commissioner allowed the claim application for injury compensation and, after issuance of notice under Section 4A, directed the insurance company to pay compensation of Rs.3,67,819/- along with interest @ 12% per annum w.e.f. 17.06.2013 till



realization. The insurance company was further held liable to pay penalty and interest under Section 4A of the Act.

3. Briefly, the claimant filed the subject application stating that he had been employed with the management since the year 2007 as a mechanic and that his last drawn salary was Rs.14,000/- per month. It was further stated that the management, being engaged in the business of construction, had deployed him at its ongoing construction site. On 18.05.2013, while deployed at the Sarojini Nagar Metro construction site, the claimant allegedly suffered injuries on account of an accident involving the breaking of the Kelly due to excessive loading, as a result of which a heavy object fell upon him. The claimant sustained injuries to his legs as well as his spinal cord, and FIR No. 137/13 under Sections 287/338 of the Indian Penal Code, 1860 came to be registered. Subsequently, the claimant was re-employed with the management, and his services were eventually terminated on 23.07.2018. Along with the claim application, a disability certificate issued by the Medical Board, Aruna Asaf Ali Government Hospital, was placed on record, wherein his disability was assessed at 41%.

4. The management appeared and admitted the employer-employee relationship. It, however, denied its liability to pay any compensation. The management further submitted that it had taken insurance policy cover under the Workmen Compensation Employees Compensation Insurance Policy vide Policy No. 360300/41/12/8600000055. Under the said policy, a total sum of Rs.29,40,000/- was insured for about 100 workers across different wage brackets. An insurance premium of Rs.20,089/- was also paid. The insurance policy was valid from 30.03.2013 to midnight of 29.06.2023. The management further stated that all medical expenses for the treatment of the



workman were borne by it and that, in total, a sum of Rs.3.50 lakh was spent towards medical expenditure.

5. The insurance company also appeared and contested the claim. It denied that any accident had taken place and, consequently, denied liability to pay compensation. It was further stated that intimation of the accident had not been conveyed to the insurance company.

6. On the basis of respective stands taken by the parties, the learned Commissioner framed four following issues: -

- “1. Whether the claimant is entitled for compensation on account of accident occurred on 18/05/2013, in the course out of his employment with respondent no 1 and if so?
2. To what amount of injury compensation is he entitled?
3. Whether the claim is time barred?
4. Whether respondent are liable to pay penalty and upto what extent and what amount?
5. Any other relief?”

7. While answering the aforesaid issues in favour of the claimant, the learned Commissioner awarded compensation of Rs.3,67,819/-, taking into account the age of the claimant as 39 years and applying the factor of 186.90 as per Schedule IV of the Act. The last drawn wages were calculated at 60%. The relevant extract of the impugned order is reproduced as under:

“15. As made discussion above for relief I am taking age of claimant as 39 years (as per disability certificate No . UP5910619730039693 issued by Medical Authority, Deoria, Uttar Pradesh) and relevant factor 186.90 and 60% of last drawn wages restricted to 8,000/- and 41 % disability (as' per disabiTity certificate issued by Medical Board - Aruna Asaf Ali Government Hospital), as such calculation is made as under:

$$\frac{186.90 \times 4800 \times 41}{100} = \text{Rs. } 3,67,819/-$$

The applicant/claimant is also entitled to interest as per Section 4A of the 'Act' @ 12% per annum from 30 days after the accident.”



8. The insurance company was also saddled with a penalty of 50% of the principal amount awarded.

9. The scope of appeal under Section 30 of the Act is limited. Being a welfare legislation, Parliament thought it is fit to restrict the appeal only to substantial questions of law. A useful reference in this regard can be made to Golla Rajanna & Ors. Vs. Divisional Manager & Anr.¹.

10. Learned counsel for the appellant/insurance company has raised twofold contentions. Firstly, it is contended that the learned Commissioner erred in granting compensation as he failed to take into account that there was no loss of earning capacity, inasmuch as the workman came to be re-employed with the same management after a period of 11 months. Moreover, during the said period of 11 months of hospitalization/treatment, the management continued to pay wages. Further, upon being re-employed, the workman was promoted from the post of Mechanic to Supervisor and his wages were enhanced from Rs.14,000/- to Rs.16,000/-. It is thus contended that, there being no loss of earning capacity, no compensation ought to have been awarded. Secondly, it is contended that the Tribunal erred in imposing penalty and interest upon the appellant, as no information of the accident was ever furnished to it by the workman/management.

11. The said contentions are opposed by learned counsel for the workman as well as the management. Learned counsel for the respondents further submits that the services of workman were subsequently terminated and the said issue though raised before the Tribunal in separate proceedings, stands

¹ (2017) 1 SCC 45



settled between the parties.

12. Coming to the first contention, namely whether brief re-employment would necessarily result in denial of compensation for loss of earning capacity, the Court refers to the decision in Palraj v. North East Karnataka Road Transport Corpn.², while considering a claim for injury compensation under the Workmen's Compensation Act, the Supreme Court was in seisin of a fact situation where the workman, employed as a driver, suffered injury but was provided alternate employment as a peon on the same salary. The Supreme Court, while upholding the decision of the High Court, granted compensation by enhancing the functional disability from 20% to 35%. The workman had suffered physical disability to the extent of 65%, while the functional disability had been assessed at 20%. In the present case, though functional disability has been assessed, it is an admitted position that the workman, who was employed as a mechanic, has suffered disability to the extent of 41%.

The relevant extracts of Palraj (*supra*) are produced hereinunder: -

“14. In the appellant's case, by virtue of the injuries suffered by him, his disablement as far as driving a vehicle is concerned is 100%, but that is not the measure of loss of his earning capacity. The Commissioner, Workmen's Compensation seems to have confused the issue by combining both functional disability and permanent disability in arriving at the figure of 85% by way of loss of earning capacity and has, therefore, arrived at a sum of Rs. 1,75,970 towards compensation. The High Court, on the other hand, realising the mistake committed by the Commissioner, assessed the loss of earning capacity as 20% instead of 85% and reduced the compensation payable from Rs. 1,75,970 to Rs. 41,404.80p. and awarded interest on the compensation amount only after 30 days of passing of the award.

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² (2010) 10 SCC 347



16. *The aforesaid provision would indicate that where a workman suffers injury which is not specified in Schedule I to the Act, compensation is to be assessed on such percentage of the compensation payable in the case of permanent total disablement as is proportionate to the loss of earning capacity, permanently caused by the injury as assessed by a qualified medical practitioner. Since in the instant case, the nature of injury suffered by the appellant is not specified in Schedule I, the compensation has necessarily to be assessed on the basis of the loss of earning capacity caused by the injury which could amount to 100% disablement in a given case. In the instant case, however, although the appellant has lost the use of his legs for the purpose of driving a vehicle, which could be said to be total disablement so far as driving of a vehicle is concerned, he is in a position to earn a living other than by functioning as a driver, which, in fact, he is currently doing, having been posted as a peon by the respondent.*

17. *Accordingly, apart from the fact that the Commissioner, Workmen's Compensation, had confused the concept of functional disablement with permanent disablement in arriving at the figure of 85% loss of earning capacity, we also have to take into consideration the fact that the injury suffered by the appellant did not disable him permanently from earning his living other than as a driver. We, therefore, are of the view that the percentage of functional disablement has to be modified, since the appellant is permanently disabled as far as earning a livelihood as a driver is concerned."*

Taking the cue from Palraj (supra), this Court is of the considered opinion that, having regard to the limited scope of appeal under Section 30 of the Act and the further fact that concededly, the argument of 'no loss of earning capacity' was not even raised before the learned Commissioner, the contention raised merits rejection. This Court even on reappraisal of merits is in agreement with the findings returned by the learned Commissioner. Insofar as the second contention, namely that no intimation of the accident was given to the appellant, is concerned, it is noted from the record of the Commissioner that the respondent had filed a communication dated 21.05.2013, whereby intimation of the accident suffered by three employees, including the present claimant, was duly furnished. The said communication also bears the stamp and acknowledgment of the



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appellant/insurance company. The contention, being misplaced, also merits rejection.

13. In view of the above, this Court finds no ground to interfere with the award. Accordingly, the present appeal is dismissed along with the pending applications. The amount lying deposited with the learned Commissioner shall be released to the workman forthwith. There shall be no order as to costs.

14. Let a copy of this order be communicated to the learned Commissioner for information and necessary compliance.

DASTI.

**MANOJ KUMAR OHRI
(JUDGE)**

FEBRUARY 26, 2026

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