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

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Decided on: 30.08.2019

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MAC.APP. 230/2019

BHAWAN SINGH BHAISORA

..... Appellant

Through: Mr. Saurabh Kansal, Advocate

Versus

MAHENDER SINGH & ORS. (UNITED INDIA INSURANCE CO LTD)

..... Respondents

Through: Mr. Manuj Aggarwal, Ms. Arunima Gupta, Advocates for R-3.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Oral)

CM No.37117/2019 (for early hearing)

This application seeks early hearing of the appeal.

For the reasons mentioned in the application, it is allowed.

The application stands disposed-off.

MAC.APP. 230/2019

1. At joint request, the appeal is taken up for hearing.
2. This appeal seeks enhancement of the award of compensation on the ground that the appellant, who has suffered 82% disability in the prime of his life at the young age of 27 years apropos both of his lower limbs, one of

which has been amputated way above the knee, has suffered on many counts such as: (i) 'loss of marriage prospects', (ii) 'mental and physical shock', (iii) 'pain and suffering', (iv) disfigurement, (v) loss of future income and earning capacity, (vi) he would also require a special diet and (vii) provision for conveyance on account of disability. Only Rs.25,000/- each towards (a) "mental and physical shock" and (b) "pain & suffering" and Rs.1,00,000/- towards "loss of marriage prospects" have been awarded. No monies have been granted for 'loss of future prospects', which would be a natural sequiter apropos employability of a person like the appellant.

3. It is argued that for calculating the 'loss of future income and earning capacity', monthly income of the appellant was taken at Rs.10,100/- with addition of 40% towards 'loss of future prospects' = Rs.14,140/-; the annual income (Rs. 14,140 x 12) comes to Rs. 1,69,680/-. After applying the multiplier of 17, the total loss of income would come to Rs.28,84,560/-. Since his 'loss of earning capacity in relation to disability' was assessed as 20% qua the whole body, the appellant was granted Rs.5,76,912/- (i.e. 20% of Rs.28,84,560/-) on the ground that he continued to be in the same job where he was earlier working; in effect, it was held that there was no loss of his earning. However, it is argued that the claimant is employed as a Shift Manager with KFC.

4. It is further argued that only because the claimant was employed in a large multi-national company, he has evidently been kept in the same position on compassionate ground. But it would not necessarily guarantee his employment for the rest of his life as continuance of such outlets are subject to the profitability and financial viability of each outlet and they can

be closed down at any time, which would render the claimant without any job and put him at mercy of somebody else, who may neither assure him nor be as compassionate apropos his employment. His photographs have been shown to the Court, showing that his leg has been amputated way above the knee and he supports himself with the crutches. Surely his disability would be far more than 20% as assessed by the learned MACT. Additionally, his lack of movement as an ordinary person would also limit his employability.

5. The learned counsel also refers to the dicta of this Court in ***Subodh Das vs. Govind & Ors.***, MAC. APP 118/2015, wherein 80% disability apropos the left lower limb was taken as 80% functional disability qua the whole body. In the present case, the disability is more aggravated as the appellant's both lower limbs have been found to be disabled upto 82%. So, in effect, the disadvantage to the claimant is twice over than what was assessed in ***Subodh Das*** (*supra*).

6. In view of the above, the Court is of the opinion that it would be justified to assess the disability as 82%, if not at 100% then at 80%, instead of 20%, as assessed by the learned MACT. In the circumstances, the appellant would be entitled to 80% of Rs.28,84,560/- apropos 'loss of future income and earning capacity' i.e. Rs.23,07,648/-, however, the learned counsel for the appellant fairly submits that the amount received from the ESI as family pension under the ESI Act would have to be taken off from the computation of the compensation. Hence, the amount of Rs. 23,07,648/- shall be deducted from the amount received for the ESI i.e. Rs.6000x 12 x17=Rs. 12,24,000/-

7. Furthermore, the Court would note that the grant of Rs.25,000/- each on account of ‘mental & physical shock’ and ‘pain & suffering’ for an unmarried young man of 27 years is also on the lower side because all his life he will feel deprived because of the pain and physical debilitation. He would be deprived of playing games with his friends as he would have done had he not been disabled on account of the accident.

8. In the circumstances, compensation on aforesaid both counts i.e. (i) “mental and physical shock” and (ii) “pain and suffering” is enhanced to Rs.1,50,000/- each. Furthermore, the appellant was also to be reimbursed Rs.2,39,000/- towards the prosthetic fitted to his amputated leg, as the said amount has not been reimbursed by the ESI. Therefore, this amount would necessarily have to be adjusted against the cost of the prosthetic i.e. Rs.6,00,000/- awarded by the learned MACT, which was directed to be kept in an FDR.

9. In any case, as noted hereinabove, a prosthetic fitted on the amputated leg would be required for a lifetime. Therefore, a prosthetic of standard good quality will be supplied to the appellant, with a lifetime warranty.

10. In view of the above, the amount, which is to be paid to the appellant in terms of the present enhancement apropos ‘loss of future prospects’ and amount of Rs. 2,39,000/- spent by the appellant shall be adjusted against Rs. 6,00,000/- deposited towards the cost of prosthetic. The deficit amount, as may be, shall be deposited within the same time.

11. A fresh computation in terms of the above shall be filed by the insurance company within two weeks from the date of receipt of copy of this order. A copy of the same shall be supplied to the claimant.
12. The appeal stands disposed-off in terms of the above.
13. The date earlier fixed i.e. 30.01.2020, stands cancelled.

NAJMI WAZIRI, J.

AUGUST 30, 2019

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