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

% *Decided on: 22.10.2019*

+ **MAC.APP. 602/2019**

AMIT SHARMA

..... Appellant

Through: Peeush Sharma & Mr. Bharvi Thakur &
Mr. Kartikey Nayyar, Advs.

versus

ANUJ KOCHAAR & ORS (THE ORIENTAL
INSURANCE CO LTD)

..... Respondent

Through: Ms. Deepika Mishra, Adv. for R- 1 & 2.
Mr. S.P. Jain, Mr. Himanshu Gambhir & Mr. Ravi
Gupta, Advs. for Insurance Company.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J (Oral)

1. This appeal impugns the award of compensation dated 17.01.2019 passed by the learned MACT in MACT No. 328/2018. The appellant seeks enhancement of the compensation awarded on the ground that, it being established that he has suffered permanent disability to the extent of 10% in his spine, it ought to have been taken into consideration by the learned Tribunal in computation of 'loss of earnings' for the resultant difficulty in his movement.

2. The impugned order has held that there was nothing on record to show that the appellant has suffered functional disability. However, the learned counsel for the appellant submits that the aforesaid finding is

erroneous because the evidence of PW-4-Dr. Deepankar Verma, Sr. Resident, Department of Orthopaedics, GTB Hospital clearly holds out that the victim suffered disability in his spine. To a query put by the learned Tribunal as to “what is the effect of disability on the functioning of the patient?”, the answer of the said doctor was that “He could lean forward, but should avoid forward and lateral bending and heavy lifting of articles.”

3. From the above, it is clear that regular ordinary movements of the patient have been seriously curtailed permanently. The appellant is working as a Senior Manager (MEP) with M/s Okamura Homes Private Limited, New Delhi. His functioning would obviously be seriously impaired. Therefore, the functional disability is established. Due compensation for the same ought to have been awarded to him. Once the disability has been established there would be corollary restrictions on the movement for a life time. That being the position, to the extent that the injured has been constraint or disabled from living his life fully. He requires to be compensated. A spinal disability of 10% would affect the movements of the injured in varied ways. Therefore, this Court deems it appropriate to consider the disability as 25% for the whole body. The appellant’s monthly salary of Rs. 81,800/- has been established. He would, therefore, be paid a compensation for loss of future earnings, which is as under:

$$\begin{aligned} &[\text{Rs. } 81,800/- \text{ (salary)} \times 25\% \text{ (disability)} = \text{Rs. } 20,450/- \times 12 \text{ (months)} \\ &\times 15 \text{ (multiplier)} = \text{Rs. } 36,81,000/-] \end{aligned}$$

4. Of the said amount 25% shall be deducted towards contributory negligence in terms of the order of the learned Tribunal. Accordingly, the amount payable under the head “loss of earnings” shall be Rs. 27,60,750/- [Rs. 36,81,000/- less Rs. 9,20,250/- (25% contributory negligence)].

5. The aforesaid enhanced amount shall be deposited before the learned Tribunal alongwith interest @ 9% from the date of filing of the Claim Petition till its realization, within three weeks from the date of receipt of copy of this order, to be released to the beneficiary(ies) of the Award, in terms of the scheme of disbursement/apportionment as specified therein.

6. The appeal is disposed-off in the above terms.

OCTOBER 22, 2019/kk

NAJMI WAZIRI, J

