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

% *Decided on: 12.09.2019*

+ MAC.APP. 735/2019 & CM APPL. 37026/2019

NATIONAL INSURANCE CO LTD Appellant

Through: Mr. Pankaj Seth, Advocate.

versus

RAMNIK SINGH & ORS Respondents

Through:

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Oral)

1. In this appeal the insurer impugns the award of compensation dated 22.04.2019 passed by the learned MACT in MACT Case no. 692/2017, on the ground that 42% disability has been assessed as 30% functional disability instead of 21% for the whole body. According to the disability certificate issued by the Guru Govind Singh Government Hospital, the victim/claimant had suffered 42% permanent disability in relation to his left upper limb. The said certificate was proven by Dr Naresh Chandra, PW-2. The condition of disability was categorised as non-progressive and not likely to improve either. The injured has also suffered post-traumatic instability in the right knee joint.
2. The learned Tribunal has referred to the jurisprudence on the issue expounded by the Supreme Court in *Jagdish vs. Mohan & Ors.*, (2018) 4 SCC 571, which holds that the awarded amount must be

a realistic compensation in accordance with enforceable rights which are intrinsic to human dignity.

3. Keeping in mind the vocation of the injured, learned Tribunal has assessed his functional disability as 30% and has awarded compensation towards 'loss of future prospects' on it in terms of the decision of the Supreme Court in ***National Insurance Co. Ltd. vs. Pranay Sethi & Ors.***, (2017) 16 SCC 680. The learned Tribunal has reasoned as under:

"46. The Hon'ble Apex Court of the land in the latest judgment which has arisen out of SLP (Civil) No. 25590 of 2014 titled as National Insurance Company Limited vs. Pranay Sethi & ors decided on 31.10.2017 has held as under:-

"61. In view of the aforesaid analysis, we proceed to record our conclusions;-

(i) The two-Judge Bench in Santos Devi (sic) should have been well advised to refer the matter to a larger Bench as it was taking a different view than what has been stated in Sara Verna (sic), a judgment by a coordinate Bench. It is because a coordinate Bench of the same strength cannot take a contrary view than what has been held by another coordinate Bench.

(ii) As Rajesh has not taken note of the decision in Reshma Kumari, which was delivered at earlier point of time, the decision in Rajesh is not a binding precedent.

(iii) While determining the income, an addition of 50% of actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made. The addition should be 30%, if the age of the deceased was between 40 to 50 years. In case the deceased was between the age of 50 to 60 years, the addition should be

15%. Actual salary should, be read as actual salary less tax

(iv) in case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years, An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation, The established income means the income minus the tax component.

(v) For determination of the multiplicand, the deduction for personal and living expenses, the tribunals and the courts shall be guided by paragraphs 30 to 32 of Sarla Verma which we have reproduced hereinbefore.

(vi) The selection of multiplier shall be as indicated in the Table in Sarla Verma read with paragraph 42 of that judgment.

(vii) The age of the deceased should be the basis -for applying the multiplier.

(viii) Reasonable figures on conventional heads, namely loss of estate, loss of consortium and funeral expenses should be Rs. 15,000/-, Rs. 40,000/- and Rs. 15,000/- respectively. The aforesaid amounts should be enhanced at the rate of 10% in every three years."

4. The Court would note that the vocation of the claimant was of running a furniture shop. In view of his disability his movements would be significantly affected. His vocation would not only require his movement from one place to another but also entail lifting or shifting of furniture while showing the same to prospective buyers, naturally the 42% disability would impair his functional disability to some significant degree. The Court is of the opinion that the claimant's functional disability assessed at 30% is not unfair.

5. In the circumstances, the Court finds no reason to interfere with the impugned order. The appeal alongwith pending application is accordingly dismissed.
6. Statutory amount, alongwith interest accrued thereon, shall be deposited into the 'AASRA' Fund.

NAJMI WAZIRI, J

SEPTEMBER 12, 2019/AB



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