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

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Decided on: 27.09.2019

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MAC.APP. 806/2019

SANJAY

..... Appellant

Through: Mr. Santosh Chaurihaa, Adv.

versus

BANWARI LAL & ORS (NATIONAL
INSURANCE CO LTD)

..... Respondent

Through: Ms. Shantha Devi Raman & Ms. Aishna
Jain, Advs. for R-3.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J (Oral)

CM No. 43613/2019 (Condonation of delay)

1. For the reasons stated therein, the application is allowed.
2. Application stands disposed off.

MAC.APP. 806/2019 & CM APPL. 43612/2019

3. Issue notice.
4. Ms. Shantha Devi Raman, the learned Standing Counsel for the National Insurance Co. Ltd., who is present in the Court, accepts notice. A copy of the paper book has been supplied to her. At joint request, the appeal is taken up for disposal.
5. The appellant has impugned the award of compensation dated 25.05.2019 passed by the learned MACT, in Suit No. 424210/2010 on the ground that against a permanent physical disability of upto 36% in the right lower limb of the injured- appellant, functional disability apropos the whole body has been assessed as only 20%. The injured-appellant was a labourer

and it is his case that his functional disability has been impaired to an enormous extent, due to that he will not be able to render services for the only vocation that he knew-offer his services as a labourer. It is contended that in face of his evident physical disability, there is hardly any prospective employer who will engage his services vis-a-vis a fully able-bodied labourer at the *chowk* where people stand in thousands to offer their physical labour for the day.

6. In the earlier round of the claim proceedings, the learned Tribunal had assessed the claimant's physical disability at 40% for the whole body because he had not lost the limb and was otherwise able to move about. However, on remand of the case to the learned Tribunal, his functional disability has been re-assessed at 20%. The impugned order has reasoned as under:

“...He further submitted that as per the testimony of PW6 Dr. Dheera A petitioner is not in a position to do labour work as he is having difficulty in squatting, standing with single limb and walking on uneven surface and difficulty in performing daily activities and in the circumstances of the patient, the infection may spread and it may need amputation. Counsel for petitioner has argued that keeping in view the testimony of PW4 and PW5 that the petitioner is suffering hardship while performing his daily activities his disability be taken as 100% in terms of judgments relied upon by him. Counsel for respondent no.3 has argued that once the petitioner had suffered injury and as per the initial disability certificate, petitioner suffered 40% temporary disability which could be reviewed after five years and since he has been re-examined once again in terms of directions of Hon'ble High Court of Delhi and this Court, permanent disability comes to 36%. The oral opinion of any of the doctor cannot be placed at a higher footing than that of the opinion of the Board of doctors who assessed the disability

and further since his only one limb has suffered disability he is capable of doing some other work therefore, disability with respect to functional disability of petitioner be taken as 20% and calculation of disability has been done accordingly. I have given my thoughtful consideration and this Court is of the opinion that since this court is having experts opinion i.e. disability certificate, the oral testimony of PW6 Dr. Dheeraj is not considerable. Seeing age and occupation of petitioner, his functional disability is taken as 20% qua whole body....”

7. Having considered the aforesaid reasoning, the Court is of the view that the effect of the disability on the earning of the injured is the essential aspect of the assessment; the compensation is to be based on the resultant functional disability. The fact that the appellant is a labourer by vocation and has no other source of livelihood, except for offering his physical labour, and the fact that he still has difficulty in standing on a single limb or while walking on an uneven surface, his ability to perform duties as a labourer would be affected at least to the extent/degree to which he has suffered physical disability. Bearing in mind that his other limbs are intact, he would as a matter of necessity with the passage of time be able to adapt himself to earn some other and/or additional means of livelihood.

8. In the circumstances, the functional disability of the appellant is assessed at 40%. Therefore, the total amount payable to the appellant would be Rs. 4,922.40 (minimum wage) X 12 (months) X 16 (multiplier) X 40/100 (40% functional disability) = Rs. 3,78,040/-

9. Let the enhanced amount of Rs. 1,89,020/- [Rs. 3,78,040/- less Rs. 1,89,020/- (previously awarded in the impugned order)] alongwith interest @ 9% from the date of filing of the appeal till its realisation, be deposited

before the learned Tribunal within three weeks from date of receipt of copy of this order, to be released to the beneficiaries of the award, in terms of the scheme of disbursement specified therein.

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

NAJMI WAZIRI, J

SEPTEMBER 27, 2019/kk

