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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Decided on: 26.09.2019

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MAC.APP. 438/2014

ORIENTAL INSURANCE CO LTD

..... Appellant

Through: Mr. Pankaj Seth, Adv.

versus

KISHORE KUMAR & ORS

..... Respondents

Through: Mr. Partap Singh, Adv. for R-1.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J (Oral)

1. The learned counsel for the appellant submits that according to the disability certificate, respondent no.1 had suffered enucleation of the right eye with 30% permanent visual disability, therefore, the functional disability should have been much less than 30% in relation to the whole body and in any case it should not have been considered at 50%, as the impugned order did.

2. The Court is of the view that for assessment of functional disability, the nature of the injury and the extent of disability has to be seen. In the present case, the victim was a driver of a commercial vehicle. The appellant admits that the right eye of the claimant was enucleated i.e. the eye ball was removed. Photograph of the injured has been shown to the Court and to the learned counsel for the appellant. The identity of and evident injury to the injured is not disputed. The photograph is taken on record and is reproduced as under:



3. The extent of injury to his eyesight is overwhelming; now the injured will never be able to obtain a license to drive a commercial vehicle. His ineligibility in this regard has been duly proven by way of a statement of PW-2-Sh. Sant Ram, Nodal Licensing Officer, Janakpuri, who had stated that a “one-eyed individual is not issued any driving license, be it private or commercial”. In effect, the functional disability, apropos his known source of income would be absolute. However, keeping in mind that all his five senses and his four limbs and one eye are otherwise intact, therefore, his functional disability, instead of 100% it will be deemed to be 90%. There shall be an enhancement in his functional disability from 50% to 90%.
4. The Court would note that compensation towards ‘loss of future prospects’ has been granted to the claimant @ 50%. He was 40 years of age, therefore, in terms of *National Insurance Co. Ltd. v. Pranay Sethi & Ors* (2017) 16 SCC 680, the same should have been 40%. It is so ordered.
5. A fresh computation apropos the enhanced amount in terms of the

above shall be supplied to the claimant by the insurance company within two weeks of receipt of copy of this order and the requisite amount shall be deposited before the learned Tribunal, within three weeks of the receipt of copy of this order, the deposited compensation shall be released to the beneficiary of the award in terms of the scheme of disbursement specified therein.

6. The appeal is partly allowed. The statutory amount, along with interest accrued thereon, be returned to the appellant.

SEPTEMBER 26, 2019/kk

NAJMI WAZIRI, J



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