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

% *Decided on: 05.09.2019*

+ **MAC.APP. 213/2013**

ORIENTAL INSURANCE CO. LTD ...... Appellant

versus

SHASHI BHUSHAN & ORS ...... Respondents

+ **MAC.APP. 214/2015**

SHASHI BHUSHAN ..... Appellant

versus

ORIENTAL INSURANCE CO LTD ..... Respondents

Through: Mr. Pradeep Gaur, Advocate for insurance company.

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Oral)

1. Both these appeals impugn the award of compensation dated 12.12.2012 passed by the learned MACT in Suit No. 155/11. MAC APP No. 213/2013 is filed by the insurance company and the Cross Objection thereto is filed by the claimant, in MAC APP No. 214/2015. The insurance company has impugned the award on the ground that once a compensation amount of Rs. 1,70,000/- has been awarded towards reimbursement of cost of fitment of an artificial limb, a further award of Rs. 17,50,000/- towards

future cost of replacement of artificial limb and Rs. 3,80,000/- towards future maintenance of the artificial limb is unwarranted and in any case on a higher side. It contends that the requirement of "just compensation" would be met with the provision of an artificial limb of standard quality. The Court is of the view that a prosthetic of maximum comfort to the injured claimant, of course with a lifetime warranty, should be the objective of just compensation. In the circumstances, the amount of Rs. 17,50,000/- and Rs. 3,80,000/- shall be deemed to be the monies payable towards future cost of the prosthetic, should it require to be replaced/upgraded/maintained, the same shall be paid from the awarded amount. The said amount would not be used for appropriation by either the insurance company or the claimant in any other way.

2. No case is made out for reducing the said amount because the comfort, convenience, and optimal movement by the artificial limb and rehabilitation of the injured is to be of paramount consideration. The monies will be used only for the purpose of replacement of the artificial limb and costs will be paid directly to the supplier of the artificial limb upon production of requisite bills to the satisfaction of the learned Tribunal. Insofar, as the said monies are to be used only for replacement of artificial limb and its future maintenance, in case the same is not utilised during the lifetime of the claimant, the insurance company will have a right to claim for refund of the said monies. A survival certificate shall be filed by the claimant by 15th January of every year before the learned MACT with an advance copy to the insurer. Simultaneously, at least annually, the insurer too shall ascertain the well being of the injured claimant.

3. The claimant, however, has impugned the award (in MAC APP 214/2015), on the ground that it has erred in deducting 50% of his salary which he would have received between the age of 56 to 60 years, had he continued to be employed. The Court would note that the impugned order has erred in holding that the claimant received exactly the same amount as he would have otherwise gotten i.e. Rs. 24,409/-. Since 50% of the said amount would be payable to the claimant as compensation by the DTC, therefore, the remainder 50% has been found to be payable by the insurer. Since the compensation is towards 'loss of earnings', therefore, the Tribunal has to ensure that such monies which may be lost towards earning on account of disability, be duly compensated to the claimant. The aforesaid calculation has been correctly computed. There is no reason to interfere with the compensation on this account.

4. The claimant contends that the compensation granted for non-pecuniary heads such as compensation towards 'pain and suffering' and 'enjoyment of life' for a 32 year old young man in the prime of his life being quantified at only Rs. 50,000/-, is on the lesser side. The Court agrees with the same and, accordingly, enhances it to Rs. 1,50,000/-. The compensation granted towards 'special diet, conveyance and attendant' @ Rs. 40,000/-, is on the lesser side because the claimant would require some assistance throughout his life, the same is enhanced to a lumpsum amount of Rs. 1,00,000/-. "Loss of amenities" granted @ Rs. 50,000/- is on the lesser side because fitment of an artificial limb surely reduces the person's enjoyment of many amenities, accordingly it is enhanced to Rs. 1,50,000/-. Thus, the total enhancement under non-pecuniary heads is Rs. 2,60,000/-. This amount shall be payable to the victim @ 9% per annum interest from the

date of filing of the claim petition till its realization. The enhanced amount shall be released to the beneficiary of the award right away and the remaining amount will be disbursed as directed by this Court.

5. The learned counsel for the insurance company states that the awarded amount of Rs. 32,78,300/-, 50% has already been released to the beneficiary of the award. However, in terms of this Court's order in MAC APP. 213/2013, the enhanced amount and the amount of Rs. 21,30,000/- i.e. Rs. 17,50,000+Rs. 3,80,000/- towards future cost of replacement of artificial limb shall be kept in an FDR; and shall be expended upon presentation of bills to the satisfaction of the learned Tribunal. The learned counsel for the claimant submits that in this year itself, the appellant has expended Rs. 1,60,000/- towards fitment of the artificial limb and Rs. 50,000/- towards servicing of the same and he would be moving an application for the reimbursement of the said monies by the learned Tribunal. Let him do so.

6. The aforesaid two appeals are disposed off in terms of the above.

7. The statutory amount of Rs. 25,000/- alongwith interest accrued thereon shall be adjusted towards the monies payable by the insurance company to the claimant.

NAJMI WAZIRI, J

SEPTEMBER 05, 2019

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