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

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Decided on: 05.09.2019

+ MAC.APP. 455/2018 & CM APPL. 19480/2018
MAGMA HDI GENERAL INSURANCE CO LTD Appellant
Through: Mr. Ved Vyas Tripathi, Advocate.

versus

AJIT KUMAR & ANR Respondents
Through:

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Oral)

1. This appeal impugns the award of compensation dated 06.02.2018 in MAC No. 178/2016, on the ground that functional disability has been considered equal to the 88% disability apropos the whole body; that it is on the higher side and it ought to be reduced.

2. Additionally, it is contented that since the disability itself was almost 88%, the other non-pecuniary heads such as i) 'compensation for mental and physical shock', ii) 'loss of amenities in life', iii) 'damages for inconvenience, hardship, discomfort, frustration and disfigurement' and iv) 'loss of marriage prospects' as well as for 'future prospects' is not warranted.

3. Each of the argument is ex-facie untenable and is rejected because to assess functional disability the impact of the injury on the day to day

functioning of the injured has to be considered i.e. the nature and extent and the likely regression of the injury has to be taken into consideration.

4. The injury to the claimant has been recorded in the impugned order as under:-

“5.2. PW2 Dr. Gurubachan has proved disability certificate of the injured as EX.PW2/1 as per which he suffered 88% disability in relation to right lower limb and 67% permanent disability in relation to bladder and bowel/ sensory loss. Total permanent disability is 88%. Due to disability, petitioner is unable to walk properly and due to sensory loss the patient may be unable to sense injuries leading to ulcer. The patient has become impotent and will not be able to perform normal sexual function. During cross examination, he has admitted that the patient requires support even to carry out daily chores. The disability is permanent in nature but patient's higher mental functions and upper limbs are normal. It is admitted that the patient had not suffered any other disability, but he is not even fit for sitting work.”

5. What is to be seen from the above is not only the impairment of the limbs of the injured, but the fact that he has a permanent disability apropos his bladder, bowel and sensory faculties. His corporal ability apropos procreation has suffered a permanent irreparable debilitation. His marital life apropos physical intimacy too has been almost obliterated for the remainder of his life. Deprivation of this essential ingredient of matrimony is not only a lifetime of cruelty to the injured but to his spouse also. He needs to be compensated adequately for this. Even otherwise he would require assistance all the time to attend to his minutest needs. The learned Tribunal has recorded that he was not even fit for any sitting work. In view of the fact that he has suffered extensive physical injuries, the ulcer and

other related debilitation may lead to further deterioration. In the circumstances, the functional disability was rightly assessed at 88%.

5. The impugned order does not call for any interference. The appeal is, accordingly, dismissed.

6. Since the case has been listed 7 times and the claimant has been represented by a counsel 6 times, the statutory deposit of Rs. 25,000/-, alongwith interest accrued thereon, shall be paid to respondent no. 1 towards costs of this litigation.

7. The appellant shall deposit the balance amount before the learned MACT within two weeks of receipt of copy of this order, alongwith interest accrued thereon, to be released to the beneficiaries of the Award, in terms of the scheme of disbursement specified therein.

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

NAJMI WAZIRI, J

SEPTEMBER 05, 2019

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