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

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Decided on: 20.09.2019

+ MAC.APP. 782/2018 & CM APPL. 35711/2018

THE NEW INDIA ASSURANCE CO LTD Appellant

Through: Mr. J.P.N. Shahi, Advocate.

versus

ARJUN SINGH & ORS Respondents

Through: Mr. Abhishek Jain and Mr. R.P. Kaushal, Advocates for R-1.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Oral)

1. This appeal impugns the award of compensation dated 10.07.2018 passed by the learned MACT in MACT No. 35/17 on three grounds that: (i) excess amounts have been reimbursed apropos medical bills; (ii) 50% disability apropos the right lower limb has been taken as 100% functional disability and; (iii) the injured himself was under the influence of alcohol at the time of the motor vehicular accident, therefore, he should be considered to have contributed to the accident.
2. The aforesaid first contention is sound and valid for the reason that the amount of Rs. 2,29,970/- expended towards medical expenses,

and the reimbursement of which has been awarded by the impugned order, had already been reimbursed to the claimant under the mediclaim policy, therefore, payment of the same once again, would tantamount to awarding an excess amount to the claimant. Reimbursement cannot be made twice over. In the circumstances, Rs. 2,29,970/- shall be deducted from the total reimbursed amount of Rs. 3,63,244/-.

3. The second argument is that 53% disability in relation to the right lower limb was taken to be 100% functional disability apropos the whole body. The Court would note that the functional disability is not 100% but 53%. This is based on the consideration that the functional disability depends upon the degree to which the day-to-day functioning of the person as well as on the extent to which his vocation and/or business is affected as a result of the disability.
4. The injured has suffered a 53% permanent physical disability in relation to his right lower limb, since his employment could not be proven, the 'loss of dependency' was calculated on the basis of the minimum wages. For a minimum wage earner and/or a daily wager, movement of all four limbs would be absolutely essential and in so far as one limb gets affected to the extent of 53%, it would surely affect the employability and physical labour output of such disabled person. In the circumstances, for a labourer or a daily wager or a person such as the petitioner who can be categorised in this unfortunate group, the functional disability up to 53% is just and calls for no interference.

5. Apropos the last contention, the negligence would be a factor to be considered if it is brought on record that the injured had wandered on the street in a drunken stupor i.e. his breath contained alcohol beyond the permissible limit. There is nothing on record to conclude that the claimant was not in control of his senses i.e. he had alcohol in his breath beyond the permissible limit. Hence, this contention is untenable and rejected.
6. In view of the above, let the amount of Rs. 2,29,970/- and the corresponding interest accrued thereon be returned to the appellant/insurer. The remaining amount be released to the beneficiary of the award in terms of the scheme of disbursement specified therein.
7. The appeal is partially allowed and is disposed-off in the above terms.
8. The statutory deposit alongwith interest accrued thereon be returned to be appellant.

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NAJMI WAZIRI, J

SEPTEMBER 20, 2019

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