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

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Decided on: 30.10.2019

+ MAC.APP. 764/2018

M/S THE NEW INDIA ASSURNACE CO LTD Appellant

Through: Mr. D.K. Sharma, Advocate.

versus

ARIF & ORS

..... Respondents

Through: Mr. Pankaj Kumar Deval and Mr.
Apar Sirohi, Advocates for R-1.
Ms. Pooja Tandon, Amicus Curiae.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Oral)

1. This appeal impugns the award of compensation dated 21.07.2018 passed by the learned MACT in MAC No. 316/16 on the ground that a proper Disability Certificate has not been issued, therefore, the assessment of compensation is flawed and it should be set aside.

2. Ms. Tandon, the learned *Amicus Curiae*, refutes the aforesaid contention and submits that the said issue has been dealt with elaborately in the impugned order as under:

“14. In fact, permanent disability, therefore, for certain purposes have been co-related with the functional disability. Disablement and loss of earning capacity are two different aspects and not substitute to each other; however, functional disability, thus, has a direct

relationship with the loss of limb. As per disability certificate Ex.PW1/11, it is 85%, but as per schedule I of the Workman's Compensation Act, 1923, item 17 "Amputation below hip with stump not exceeding 5" in length measured from tip of great trochanter is 80%" and its functional disability may be definitely less than it. Petitioner stated to be supervisor in the company at construction site and his work was bound to suffer by this imputation. However, it is not disputed that the injured has not become defunct by this disability. Though the disability certificate of the injured is not meant for road accident cases, yet it is not going to effect in any manner as the Workmen's Compensation Act, 1923 has defined the percentage of the injury and it may be considered even by handicapped certificate as well. In view of the facts, I determine the functional disability of the injured as 70% as similar of Sanjay Kumar v. Ashok Kumar And Another, (2014) 5 SCC 330 wherein also the amputation of right leg above knee took place and injured was also embroider and capable to perform his work in similar manner as of petitioner in this case. In that case also, the future damages were also determined as per 70% disability."

3. She further submits that the disability of the injured was duly assessed and a certificate was issued by a Committee of Doctors, which included orthopaedic experts. His physical disability had rightly been determined as 85% and the same is evident from the Disability Certificate annexed as Ex. P-1. The learned Tribunal considered his functional disability as 70%.

4. This appeal further impugns the award of compensation on the ground that there should not be any duplication of the compensations awarded under the Workmen's Compensation Act, 1923 and the Motor Vehicles Act, 1988.

The appellant has not shown any such duplication in the impugned order. Therefore, it calls for no interference.

5. The appeal is without merit and is accordingly dismissed. Interim orders stand vacated. Let the awarded amounts be deposited before the learned Tribunal within two weeks of receipt of copy of this order, to be released to the beneficiary(ies) of the Award in terms of the scheme of disbursement specified therein.

6. The statutory amount, alongwith interest accrued thereon, be deposited into the 'AASRA' Fund created by this Court.

7. The Court records its appreciation of the able assistance rendered by Ms. Pooja Tandon, the learned *Amicus Curiae*.

OCTOBER 30, 2019

AB

NAJMI WAZIRI, J

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