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

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Decided on: 12.09.2019

+ **MAC.APP. 1116/2018**

ANAND SINGH

..... Appellant

Through: Mr. Shekhar Aggarwal, Advocate.

versus

**MAJOOR SAHA & ORS (SHRIRAM GENERAL INNSURANCE
CO LTD)**

..... Respondents

Through: Mr. Sameer Nandwani, Advocate for
insurance company.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Oral)

1. This appeal impugns the award of compensation dated 29.09.2018 passed by the learned MACT in D-1126/2016 and seeks enhancement on the ground that it has erred in not granting compensation for 'loss of earning capacity'. The appellant was injured in a motor vehicular accident resulting in permanent physical disablement of 15% in relation to his right upper limb which was on account of his having suffered 'fracture proximal humerus right' in the right upper limb.

2. The appellant has been granted Rs. 50,000/- as compensation on account of pain and suffering, however, apropos the disablement, the learned Tribunal has dealt with the issue as under:

“21. The petitioner has not stated the impact of the permanent disability suffered by him on his earning capacity. Even, he did not disclose his avocation in his affidavit Ex.PW1/A. During cross-examination, he deposed that he was running a tea stall. He suffered 15% permanent disability in relation to 'right upper limb' on account of 'fracture proximal humerus right'. Dr. Sanjeev Gambhir categorically stated that the petitioner will be able to carry out any kind of activity involving right upper limb except lifting objects over head.

22. According to assessment sheet Ex.PW2/B, the petitioner suffered restriction in respect of range of motion and muscle strength at shoulder level right to the extent of 6%. In the opinion of the tribunal, the nature of disability suffered by the petitioner would have no impact on his earning capacity or carrying out his avocation. Therefore, the petitioner is not entitled to loss of future income on account of permanent disability suffered by him. (Ref: Satyawati Wadhwa versus Jitender Singh & Ors., MAC APR 73/2013 decided on 10.05.2016)”

3. The appellant had deposed that he was running a tea stall. In effect, most of his activities would be related to his hands in the preparation and serving of tea. It has been noted in the impugned order that his “range of motion and the muscle strength at the shoulder level” in the right hand would be affected at least to 6%. His right hand being his main hand, his functional disability would be affected at least to that extent. Therefore, he is entitled to compensation for this loss.

4. In view of the above, the appellant would be entitled to compensation to the extent of 6% towards functional disability.

5. The appellant was admittedly incapacitated because of hospitalisation for about seven days. He has sought compensation for the same under the head of attendant charges. The lumpsum amount of Rs. 7,000/- is granted.

The fresh computation of the amount payable by the insurance company shall be computed by it and furnished to the appellant within three weeks from today alongwith deposit of the enhanced amount with interest @ 9% per annum thereon from the date of filing of the claim petition for it to be released to the appellant in terms of the scheme of disbursement specified therein.

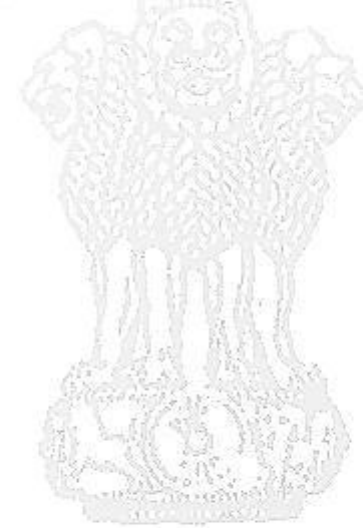
6. The appeal is disposed-off in the above terms.

7. A copy of this order be given *dasti* to learned counsel for both the parties under the signature of the Court Master.

SEPTEMBER 12, 2019

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NAJMI WAZIRI, J



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