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

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Decided on: 25.07.2019

+ MAC.APP. 1142/2018, CM APPL. 53484/2018 & CM APPL. 10194/2019

SHRIRAM GIC INSURANCE CO LTD Appellant

Through: Mr. Amit Kumar, Advocate.

versus

KAMLA SHANKAR & ORS Respondents

Through:

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Oral)

1. The appellant impugns the award of compensation on the ground that when the physical disability was merely 58% in both the lower limbs, the functional disability has been considered as 80%.

2. On a query put to the learned counsel for the appellant as to whether the disabled labourer, who was working as a helper with Delhi MRTS Project, Phase-III through M/s FEMC Pratibha JV, Delhi, would be able to carry on his work as a helper, he fairly concedes that because of 58% of both lower limbs being non functional, the injured victim is not likely to ever discharge the same nature of work and responsibilities. Likewise, the learned MACT has recorded that the claimant would be unable to discharge

his duties as he was doing earlier. Logically, the functional disability would be more than physical disability in the context of the extent of the physical disability and the nature of work or vocation of the injured. The learned MACT has fairly considered the functional disability as 80%.

3. Therefore, the appellant's contention in this regard, is untenable and is rejected.

4. The second argument is that wages of a non-matriculate have been taken into consideration, while there is nothing on record to prove that the claimant had indeed studied upto Class IX.

5. However, the appellant has brought nothing on record to doubt or to shake the statement of the claimant that he had studied only upto class IX and that he was a non-matriculate. In the circumstances, the learned MACT has rightly taken minimum wages applicable to a non-matriculate person. If the appellant/insurer was unable to shake the testimony of the claimant then the same would be considered as reliable, for the purpose of awarding compensation.

6. In view of the above, there is no merit in the appeal. Accordingly, it is dismissed.

NAJMI WAZIRI, J.

JULY 25, 2019

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