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

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Decided on: 26.02.2020

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MAC.APP. 105/2020

SANDEEP RATHI

..... Appellant

Through: Mr. Arpit Srivastava, Adv.

versus

**CHOLAMANDALAM MS GENERAL INSURANCE CO LTD &
ORS**

..... Respondents

Through: Mr. Pankaj Gupta, Adv. for Ms.
Suman Bagga, Adv. for R-1.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Oral)

CM APPL. 7701/2020 & CM APPL. 7702/2020 (Exemptions)

1. Allowed, subject to all just exceptions.
2. The application stands disposed-off.

CM APPL. 7700/2020 (for delay)

3. For the reasons mentioned in the application, it is allowed.
4. The delay in filing the appeal is condoned.
5. The application stands disposed-off.

MAC.APP. 105/2020

6. Issue notice.
7. The learned counsel named above accepts notice on behalf of the insurance company.
8. At joint request, the appeal is taken up for disposal.

9. This appeal impugns the award of the compensation dated 09.10.2019 passed by the learned MACT in MACP No. 77467/2016, inasmuch as no compensation has been granted to the injured towards 'loss of future prospects' which the claimant would be entitled to @ 40% in terms of the dicta of the Supreme Court in *National Insurance Co. Ltd. v. Pranay Sethi & Ors* (2017) 16 SCC 680, since he was self-employed and was under the age of 40 years. The aforesaid contention is valid. Accordingly, an addition of 40% is hereby granted to the claimant towards 'loss of future prospects'.

10. The second contention is that against 63% permanent physical disability apropos his right upper and lower limb, functional disability of 32% has been assessed in the impugned order. The Court would note that for a shopkeeper, the functional disability would certainly be more than 32%.

11. The learned counsel for the respondent submits that there is no proof that the claimant cannot discharge his functions as a shopkeeper or to serve his customers effectively. While assessing 32% disability apropos the whole body, the impugned order has reasoned as under:-

“24. To prove that the petitioner sustained permanent physical disability, he examined PW2/Dr.Naresh Chandra, Specialist/HOD/GGS Hospital, who examined him and had assessed his physical disability being one of the Members of the Medical Board. PW2/Dr.Naresh Chandra testified that the Medical Board had issued a Permanent Disability Certificate (Ex.PW2/A) in respect of petitioner, as per which, petitioner was found to be suffering from permanent physical disability of 63% in relation to his right upper and lower limbs.

25. Considering the facts and circumstances of the present case, the functional disability of the petitioner in the present case is assessed as 32% in relation to his whole body”.

12. This Court is of the view that for a shopkeeper physical agility is requisite, for ably dealing with and serving customers, especially for accessing items kept on a shelf or at a height above the shoulders or even on lower shelves which would require bending down. But all these movements would be severely restricted and curtailed in a person who has suffered permanent disability upto 63% in his upper and lower limbs on one side of the body. There would be a corresponding functional disability in serving the customers. Therefore, the functional disability in this particular case should be considered as proportionate to the permanent physical disability.

13. In view of the above, the functional disability of the injured apropos 32% permanent physical disability in right upper and lower limb shall be assessed at 63%. Accordingly, the amounts payable to the claimants towards 'loss of earning' on account of disability shall be calculated as under:-

Rs. 10,478/-(monthly income) x 63/100 (physical disability)x12 (months) x 18 (multiplier) x 140/100 (40% future prospects) = Rs. 19,96,185/-

14. Let the enhanced amount alongwith interest @ 9% p.a. from the date of filing of the claim petition till its realization, be deposited by the insurer before the learned Tribunal, within three weeks from the date of receipt of a copy of this order, to be released to the beneficiary of the Award in terms of the scheme of disbursement specified therein.

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

NAJMI WAZIRI, J

FEBRUARY 26, 2020

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