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

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Date of Decision: 29th May, 2018

+ MAC.APP. 1135/2017

IFFCO TOKIO GENERAL

..... Appellant

Through: Mr. Mrinal Harshvardhan, Advocate

versus

INDRA DEVI & ORS

..... Respondents

Through: Mr. S.N. Parashar, Advocate for
respondents No.1 to 5

CORAM:

HON'BLE MR. JUSTICE J.R. MIDHA

JUDGMENT (ORAL)

1. The appellant has challenged the award of the Claims Tribunal whereby compensation of Rs.22,95,700/- has been awarded to respondents No.1 to 5.
2. The accident dated 08th February, 2015 resulted in the death of Gajraj. The deceased aged 27 years was working as a driver and he was survived by his widow, mother and three minor sons who filed the claim petition. The Claims Tribunal took the minimum wages of Rs.8,632/- in respect of an unskilled worker as income of the deceased, deducted 1/4th towards his personal expenses and applied the multiplier of 17 to compute the loss of dependency as Rs.13,20,696/-. The Claims Tribunal awarded Rs.4,50,000/- towards loss of love and affection, Rs.1,00,000/- towards loss of consortium, Rs.1,00,000/- towards loss of estate, Rs.3,00,000/- towards loss of guardian

and Rs.25,000/- towards funeral expenses. The total compensation awarded by the Claims Tribunal is Rs.22,95,700/-.

3. Learned counsel for the appellant urged at the time of hearing that the compensation awarded under the heads of loss of consortium and loss of estate is on a higher side whereas the compensation under the head of loss of guardian and loss of love and affection is not permissible in law.

4. Learned counsel for the respondents submits that the Claims Tribunal ought to have taken minimum wages of a skilled worker as the deceased was a driver and the Claims Tribunal also erred in not adding the future prospects in computing the loss of dependency.

5. There is merit in the contentions of both the parties. The compensation of Rs.4,50,000/- awarded under the head of loss of love and affection is no more a permissible head, in view of the *National Insurance Co. Limited vs. Pranay Sethi and Ors.* 2017 SCC Online SC 1270, and, therefore, is set aside. The compensation of Rs.3 lakh awarded towards loss of guardian is also not a permissible head and is liable to set aside. The compensation for loss of consortium is reduced to Rs.40,000/-; compensation for loss of estate is reduced to Rs.15,000/-; compensation for funeral expenses is reduced to Rs.15,000/-. The deceased, employed as a driver was a skilled worker and, therefore, the minimum wages of Rs.10,478/- has to be taken into consideration. The deceased was aged 26 years and 40% addition towards future prospects have to be taken into consideration for computing loss of dependency.

6. This Court is of the view that the reduction of the award amount on the grounds mentioned above would neutralize the enhancement warranted after taking minimum wages of a skilled worker and the addition of the 40%

future prospects. Applying the principles of Section 167 of the Indian Evidence Act, the award of Rs.22,95,700/- is upheld for the reasons mentioned hereinabove.

7. The appeal is partially allowed. However, the award amount of Rs.22,95,700/- is upheld for the reasons mentioned hereinabove.

8. The appellant has deposited the entire award amount with the Claims Tribunal in terms of the order dated 02nd January, 2018 and the Claims Tribunal has disbursed the same to the claimants.

9. The statutory amount be refunded back to the appellant.

10. Copy of this order be given *dasti* to counsels for the parties under signatures of the Court Master.

MAY 29, 2018

rsk

J.R.MIDHA, J.

भारतमेव जयते