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

% *Decided on: 26.11.2019*

+ MAC.APP. 344/2018 & CM APPL. 13401/2018

UNITED INDIA INSURNACE CO LTD Appellant
Through: Mr. Pankaj Gupta, Adv.

versus

SHIKHA GOEL & ORS Respondents
Through: Mr. Jitender Kamra, Adv.

+ MAC.APP. 5/2019
SHIKHA GOEL & ORS Appellants
Through: Mr. Jitender Kamra, Adv.

versus

ILLYAS & ORS (UNITED INDIA INSURANCE CO LTD)
..... Respondents
Through: Mr. Pankaj Gupta, Adv.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Oral)

1. The appellant impugns the award of compensation dated 04.01.2018 passed by the learned MACT in MAC Petition No. 505351/16 (Old MAC Petition No. 508/09) on two grounds that: (i) the income from other sources and interest on deposits ought to have been deducted while computing compensation of 'loss of dependency'; (ii) the deceased being self employed, the claimants would be entitled to 40% addition towards 'loss of

future prospects’ and not 50% as awarded by the impugned order. In the light of the dicta of the Supreme Court in *National Insurance Co. Ltd. v. Pranay Sethi & Ors*, (2017) 16 SCC 680, the second contention is valid. Accordingly, the addition towards ‘loss of future prospects’ is reduced from 50% to 40%.

2. Apropos the first argument, the Court notes that there are two components in ‘income from other sources’: (i) interest on the deposits and (ii) income from commissions. While the income from deposits would continue as long as the deposits were kept alive, it would not be related to any activity by the deceased. The second component i.e. income from commissions would be entirely dependent upon the activities and efforts of the deceased regarding marketing and sales of the pharmaceutical products. His skills would have been an important factor in sales of the product and then the resultant commission earnings. The latter earning would be personal to the deceased, therefore, it will not be deducted from the total income. The learned counsel for the parties state that income from interest on deposits for the relevant period was Rs. 2,442/-. Let this amount be deducted from deceased’s annual income of Rs. 3,18,768/-. The residual sum of Rs. 3,16,326/- shall be taken as the income of the deceased, to calculate compensation towards ‘loss of dependency’.

3. The claimants have sought payment of award of just compensation on account of ‘loss of love and affection’ and ‘loss of consortium’. It is contended that no amounts were granted towards ‘loss of love and affection’ and only Rs. 40,000/- were granted as lumpsum to four claimants for ‘loss of consortium’. Although it was not proven that the father was financially

dependent on the deceased, nevertheless would emotionally be an aggrieved party because of loss of his son. He along with other claimants would be entitled to and they are granted compensation towards 'loss of consortium' and 'loss of love and affection' @ 40,000/- and Rs. 50,000/- each, respectively, in terms of *Magma General Insurance Co. Ltd. v. Nanu Ram Alias Chuhru Ram & Ors.* 2018 SCC OnLine SC 1546. Since there are four claimants, the deduction towards 'personal expenses' shall be 1/4th, in terms of *Sarla Verma and Ors. v. Delhi Transport Corporation and Anr.* (2009) 6 SCC 121.

4. Accordingly, the amount payable to the claimants is as under:

S.No.	Particulars	Amount
1.	Loss of Dependency [Rs. 3,16,326/- (annual income of the deceased) x 15 (multiplier) x 140/100 (loss of future prospects) x 75/100 (1/4 th deduction towards personal expenses)]	Rs. 49,82,135/-
2.	Loss of love and affection [Rs. 50,000/- x 4 (claimants)]	Rs. 2,00,000/-
3.	Loss of consortium [Rs. 40,000/- x 4 (claimants)]	Rs. 1,60,000/-
	TOTAL	Rs. 53,42,135/-
	Less Rs. 48,52,000/- amount awarded by learned Tribunal	Rs. 4,90,135/-

5. Let the aforesaid enhanced amount, alongwith interest @ 9% from the date of filing of the Claim Petition i.e. 18.09.2009 till its realization, be deposited before the learned Tribunal to be released to the beneficiary(ies) of the Award, in terms of the scheme of disbursement specified therein. The

father shall be paid only the non-pecuniary compensation of Rs. 90,000/- plus the interest thereon right away.

6. The appeals are disposed-off in the above terms. Excess amount, if any, be returned to the appellant.

7. Since the appellant/insurance company has succeeded in the appeal being MAC APP. 344/2018, the statutory amount, along with the interest accrued thereon, be returned to it.

NAJMI WAZIRI, J

NOVEMBER 26, 2019

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