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

% *Decided on: 12.12.2019*

\+ **MAC.APP. 892/2019**

NEW INDIA ASSURANCE CO LTD ..... Appellant
Through: Mr. Maibam N. Singh, Adv.

versus

KUSUM & ORS ..... Respondents
Through: Mr. Jatinder Kumar, Adv. for R- 1 to 6.

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J (Oral)

MAC.APP. 892/2019 & CM APPL. 50159/2019

1. This appeal impugns the award of compensation dated 15.10.2019 passed by the learned MACT in MACT No. 14276/15, on the ground that instead of 40%, addition of 15% ought to have been awarded towards 'loss of future prospects' because the deceased was 50 years and 4 months old at the time of the motor accident and in terms of the dicta of the Supreme Court in *National Insurance Co. Ltd. vs. Pranay Sethi & Ors.*, (2017) 16 SCC 680 (para 59.3). It holds that for a person falling in the age bracket of 50 to 60 years, the addition towards 'loss of future prospects' would be 15%. The contention is valid, therefore, the addition shall be 15% and not 40%. Secondly, the appellant contends that Rs. 80,000/- and Rs. 3,00,000/-,

awarded as compensation towards 'loss of consortium' and 'loss of love and affection' respectively is erroneous.

2. Following the dicta of the Supreme Court in *Magma General Insurance Co. Ltd. vs. Nanu Ram @ Chuhru Ram & Ors.*, 2018 SCC OnLine SC 1546, this Court had awarded compensation towards 'loss of love and affection' and 'loss of consortium' @ Rs. 50,000/- and Rs. 40,000/- respectively, to each of the claimants in *National Insurance Co. Ltd. vs. Lokesh Verma & Ors.*, MAC. APP. 762-763/2019 decided on 02.09.2019, in which it was held as under:

> "....
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> *10. The Court would note that in terms of Magma General Insurance Co. Ltd. v. Nanu Ram Alias Chuhru Ram & Ors., 2018 SCC OnLine SC 1546, each of the two claimants would be entitled to an award of compensation at the rate of Rs. 40,000/- and Rs. 50,000/- towards 'loss of consortium' and 'loss of love and affection' respectively. The impugned order has only awarded Rs. 40,000/- towards 'loss of consortium', same would have to be supplemented by another Rs. 40,000/- towards "loss of consortium" and Rs. 1,00,000/- towards "loss of love and affection" (Rs. 50,000/-x2) "*

3. An SLP against the said judgment was dismissed by the Supreme Court on 24.10.2019.

4. Likewise in this case too, each of the claimants would be entitled to compensation towards 'loss of consortium' and 'loss of love and affection' @ Rs. 40,000/- and Rs.

50,000/- respectively. There were seven claimants; the widow, her four children and parents of the deceased; all of them have to be claimed financially dependent upon the deceased; claimant nos. 2, 3 & 4 have been found to be of the age of majority on the date of accident. Their ages were 24, 21 & 20 respectively. Simply by attaining the age of maturity the person does not necessarily become financially independent. They had pleaded dependency and had also led evidence in this regard. Indeed the learned Tribunal has recorded their contention as under:

> *"…28. Claimants are wife, children and aged father of deceased who, as stated, were dependent upon him and deceased was the sole bread earner of the family. Father of deceased is stated to be 69 years of age and is not working/ employed. In the Statement of wife of deceased under clause 29 of MCTAP, it was stated that three of her children are married and one son namely Nitin is unmarried and is pursing Graduation. Said Nitin was minor at the time of incident who, as stated, how has attained majority but was entitled to receive the compensation as on the date of accident till the date of majority at least. Petitioners no. 2, 3 & 4 were major as on the date of accident. …"*

5. The father of the deceased has carved out a case of dependency under the exception in *Sarla Verma vs Delhi Transport Corporation* (2009) 6 SCC 121, which has held that ordinarily the father would not be considered as a dependent unless evidence is led to the contrary. That being the position, and there being 7 dependents, even if 3 of them are taken out, the loss of dependency would be for 4 persons,

therefore, the deduction should have been 1/4th and not 1/3rd. In these circumstances, the total amount payable would be as under:

S.No.	Particulars	Amount
1.	Loss of Dependency [Rs. 31,039/- (monthly income) x 12 (months) x 13 (multiplier) x 115/100 (loss of future prospects) x 75/100 (1/4th deduction towards personal expenses)]	Rs. 41,76,298 /-
2.	Loss of love and affection [Rs. 50,000 x 7 (claimants)]	Rs. 3,50,000/-
3.	Loss of consortium [Rs. 40,000 x 7 (claimants)]	Rs. 2,80,000/-
4.	Loss of estate	Rs. 15,000/-
5.	Funeral expenses	Rs. 15,000/-
TOTAL		Rs. 48,36,298/-

6. Let the aforesaid amount alongwith interest accrued thereon @ 9%, be deposited before the learned Tribunal, within three weeks from the date of receipt of copy of this order, to be released to the beneficiary(ies) of the Award in terms of the scheme of disbursement specified therein. The appeal is allowed and disposed off in terms of the above.

7. Since the appellant has succeeded partially in the appeal, the statutory amount, along with interest accrued thereon, shall be returned to the appellant.

NAJMI WAZIRI, J

DECEMBER 12, 2019/kk