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

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Decided on: 10.10.2019

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MAC.APP. 802/2019 & CM APPL. 42913/2019

THE ORIENTAL INSURANCE CO LTD

..... Appellant

Through: Mr. Ravi Sabharwal, Advocate.

versus

POONAM & ORS

..... Respondents

Through: Mr. Vimal Kumar, Advocate for R-1
alongwith R-1.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Oral)

1. On the previous date, the following order was passed:-

“The award of compensation dated 21.08.2019 passed by the learned MACT in MACP No. 521/2019 is impugned on the ground that the DAR was taken as the gospel truth of the events which led to the demise of Mahender- victim of the fatal motor-vehicular accident.

It is the appellant's case that they had offered Rs. 9,37,750/- towards settlement of the claims which were premised on the ground that the deceased having thrown caution to the wind, tried to alight from a moving bus and unfortunately came under its wheels. It is pertinent to note that the appellant-insurance company has not eye-witness to support this contention.

The learned counsel for the appellant is unable to show, either in the DAR or in the FIR, that there is even a whisper of the deceased alighting from a running bus. In other words, the basis of this appeal is unfounded. The learned Tribunal has reasoned and recorded as under:-

“Record perused. It is evident that facts related to motor accident have been verified and DAR has been filed. The facts i.e. involvement of the offending vehicle bearing registration No. DL-1VC-1113 and death of Mahender in the accident involving said vehicle, are not disputed. Further, the documents filed alongwith DAR prima facie indicate towards rash and negligent driving of the bus by respondent No. 1/ Rahul Yadav. Though, insurer has deducted 50% of the compensation on account of contributory negligence, however, no reasonable basis has been furnished. It is claimed by the insurer that deceased had fallen down while alighting from running bus without taking proper precaution and thus he had also contributed to the alleged accident. On perusing the DAR and supporting documents including the charge sheet, it is found that there is no material to show that deceased was at fault in any manner. In view of Rule 7 of Delhi Accident Claims Tribunal Rules 2008, the contents of DAR shall be presumed to be correct and shall be read in evidence without formal proof, till proved to the contrary. In view of this, no deduction can be made in the name of contributory negligence.”

What emanates from the above is that in the absence of even an allusion in the two documents i.e. DAR and FIR, on which the appellant could have founded its present argument, the same cannot be a basis for impugning the Award.

The learned counsel for the appellant submits that the opinion established on the basis of the DAR ought to have been taken into consideration by the learned Tribunal and the parties to have been given an opportunity to put up their case. It is not as if the DAR was not put before the parties or that they were not heard. The impugned order has noted that the

involvement of the offending vehicle and the demise of Mahender in the said motor vehicular accident was not disputed. Albeit, the insurer had claimed that the deceased had fallen from a running bus. They were unable to show any material in support of this contention. In the circumstances, the learned Tribunal has rightly concluded that there was no occasion to even consider contributory negligence on the part of the deceased. Hence, no deduction to the Award could be made on this count. The aforesaid argument is untenable and the appeal on this ground is rejected.

However, the learned counsel for the appellant further submits that there is an error in calculating the minimum wages notified for an unskilled worker in Delhi which at the relevant time was Rs. 14,000/- and not Rs. 15,400/-. He seeks to bring on record the relevant Notification in this regard

The Court would note that even if the aforesaid contention of error in calculating the minimum wage is considered, the difference would merely be Rs. 1,70,625/- [Rs.14,000/- (minimum wages) x 13 (multiplier) x 75/100 (1/4th deduction towards personal expenses) x 125/100 (25% towards loss of future prospects).

At this stage, the Court would note that the impugned order has not granted compensation towards 'loss of love and affection' @ Rs. 50,000/- to each of the claimants, in terms of the dicta of the Supreme Court in Magma General Insurance Co. Ltd. v. Nanu Ram Alias Chuhru Ram & Ors. 2018 SCC OnLine SC 1546. In the circumstance, the insurer, in addition to the awarded amount, shall pay Rs. 1,50,000/-, alongwith interest accrued thereon towards "loss of love and affection".

Thus, the amount now payable is Rs. 21,31,375/- [Rs. 21,52,000/-(awarded amount) less Rs. 1,70,625/- plus Rs. 1,50,000/- (loss of love and affection)]

In view of the above, let the aforesaid amount be deposited before the learned Tribunal at the same rate of

interest and from the same date as mentioned in the Award, within three weeks from date of receipt of copy of this order, to be released to the beneficiaries of the Award, in terms of the scheme of disbursement specified therein.

For the issue of the applicable rate of minimum wages i.e. whether it was Rs. 14,000/- or Rs. 15,400/-, issue notice through ordinary process, Speed Post, approved courier, WhatsApp, E-mail, dasti, through counsel as well, returnable on 10.10.2019.”

2. When the case was called out in the morning, the learned counsel for respondent no. 1 sought time to research the matter and to seek instructions. Having done so when the case is called out at 14.55 hours, he submits that minimum wage applicable to the claimant would be Rs. 14,000/- and not Rs. 15,400/-. The learned counsel for the appellant refers to the Notification of the GNCTD available on the website of the Department of Labour, which shows that the minimum wages applicable to an unskilled workman as of 01.10.2018 was Rs. 14,000/-. The said information is available on the website viz. www.labour.delhi.gov.in > content > current-minimum-wage-rate.

3. The learned counsel for the claimant submits that the compensation towards ‘loss of dependency’ may accordingly be rectified to the extent of by taking the applicable minimum wage as Rs. 15,400/- instead Rs.14,000/-. It is so ordered.

4. Additionally, each of the claimants shall be entitled to compensation towards ‘loss of love and affection’ and ‘loss of consortium’ @ Rs. 50,000/- and Rs. 40,000/- respectively, in terms of the dicta of the Supreme Court in ***Magma General Insurance Co. Ltd. vs. Nanu Ram @ Chuhru Ram &***

Ors., 2018 SCC OnLine SC 1546. Similarly, compensation towards ‘Funeral Expenses’ and ‘Loss of Estate’ shall also be awarded @ Rs. 15,000/- under each head in terms of *National Insurance Co. Ltd. v. Pranay Sethi & Ors* (2017) 16 SCC 680.

5. Accordingly, the total payable amount would be as under:

S.No.	Particulars	Amount
1.	Loss of dependency Rs. 14,000/- (minimum wage) x 12(months) x 13(multiplier) x 75/100(1/4 th deduction towards personal expenses) x 125/100 (25% towards loss of future prospects)=.	Rs. 20,47,500/-
2.	Loss of Love and Affection [Rs. 50,000/-x 3 (Claimants)]	Rs. 1,50,000/-
3.	Loss of Consortium [Rs. 40,000/-x3 (Claimants)]	Rs. 1,20,000/-
4.	Loss of Estate	Rs. 15,000/-
5.	Funeral Expenses	Rs. 15,000/-
TOTAL		23,47,500/-

6. The aforesaid total payable amount shall be deposited before the learned Tribunal alongwith interest @ 9% from the date of filing of the Claim Petition till its realization, 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/apportionment as specified therein.

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

8. The statutory amount, alongwith interest accrued thereon, be returned to the appellant.

NAJMI WAZIRI, J

OCTOBER 10, 2019

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