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

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Decided on: 16.10.2019

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MAC.APP. 88/2019

ITI GOYAL & ORS

..... Appellants

Through: Mr. Anshuman Bal, Adv.

versus

ROYAL SUNDARAM ALLIANCE

INSURANCE CO LTD & ANR

..... Respondents

Through: Mr. Pankaj Gupta, Adv. for Ms. Suman
Bagga, Adv.**CORAM:****HON'BLE MR. JUSTICE NAJMI WAZIRI****NAJMI WAZIRI, J (Oral)**

1. This appeal seeks enhancement of the compensation amount awarded by the learned Tribunal in MACT No. 522/2017 dated 12.10.2018 on the ground that there were five claimants, of whom even if the father of the deceased is not considered as a dependent, there are still four dependents. Therefore, the deduction towards personal expenses ought to have been considered as $1/4^{\text{th}}$ and not $1/3^{\text{rd}}$, as computed in the impugned award.

2. The aforesaid contention is valid. Accordingly, the deduction towards personal expenses shall be made as $1/4^{\text{th}}$.

3. The appellant seeks further enhancement on the ground that the ITR of the Assessment Year prior to the demise of the deceased had been taken into consideration whereas the deceased having died on 28.09.2016, the ITR filed after his demise for that financial year, should have been taken into

consideration. He relies upon the decision of this Court dated 13.01.2015 passed in MAC.APP. No. 23/2013, titled: ***Geeta & Ors. vs Dinesh Chander & Ors.***, in which ITR filed after the demise of the deceased was taken into consideration.

4. The Court would note that in the cited case, the deceased passed away on 01.03.2010 and the ITR was filed on 29.07.2010. In other words, the financial year had almost elapsed, financial dealings of that assessment year had already fructified and the remaining 30 days would not necessarily have made so much of a difference to the earning of the deceased. In the present case, the victim passed away midway through the assessment year and his business was stated to have been continued by his bereaved father. In that year the ITR showed the income of the deceased to have increased by about Rs. 90,000/- i.e. by nearly 40% as compared to the previous year. The facts of ***Geeta (supra)*** and the present case are different, therefore, to place reliance upon the latter ITR would not be fair. Notably, the claimants did not have any record to show with certainty as to what was the income of the deceased as on the date of his demise. In view of the above, this contention is untenable and is, accordingly, rejected.

5. The other arguments are non-award of compensation on non-pecuniary heads to all the claimants. There are five claimants and in terms of the dicta of the Supreme Court in ***Magma General Insurance Co. Ltd. vs. Nanu Ram Alias Chuhru Ram & Ors.*** 2018 SCC OnLine SC 1546, each of the claimants are entitled to and are granted compensation towards 'loss of love and affection' and 'loss of consortium' @ Rs. 50,000/- and Rs. 40,000/- respectively. The additional amount under these two heads would be Rs.

1.80 lacs.

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

S.No.	Particulars	Amount
1.	Loss of Dependency [Rs. 2,97,598/- (annual income of deceased) x 140/100 (loss of future prospects) x 16 (multiplier) x 75/100 (1/4th deduction towards personal expenses) = Rs. 49,99,646/- less Rs. 44,44,128/- (already awarded by Tribunal)]	Rs. 5,55,518/-
2.	Loss of love and affection [Rs. 50,000/- x 5 (claimants) less Rs. 1,50,000/- (already awarded)]	Rs. 1,00,000/-
3.	Loss of consortium [Rs. 40,000/- x 5 (claimants) less Rs. 1,20,000/- (already awarded)]	Rs. 80,000/-
	TOTAL	Rs. 7,35,518/-

7. The enhanced amount of Rs. 7,35,518/- alongwith interest @ 9% from the date of filing of the Claim Petition till its realization, shall be deposited with the Registrar General of this Court 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.

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

NAJMI WAZIRI, J

OCTOBER 16, 2019/kk