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

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*Decided on: 13.12.2019*

+ MAC.APP. 676/2018, CM APPL. 29315/2018 & CM APPL. 8472/2019

THE TATA AIG GEN INSURANCE CO.LTD ..... Appellant

versus

NASIM & ORS

..... Respondents

+ MAC.APP. 137/2019

NASIM & ORS

..... Appellants

versus

THE TATA AIG GEN INSURANCE CO LTD & ORS

..... Respondents

Through: Mr. S.P. Jain and Mr. Himanshu Gambhir, Advocates for insurance company.

Mr. Ajay Garg, Ms. Tripti Gola and Ms. Varnika Bajaj, Advocates for claimants.

**CORAM:**

**HON'BLE MR. JUSTICE NAJMI WAZIRI**

**NAJMI WAZIRI, J. (Oral)**

1. These appeals impugn the award of compensation dated 26.04.2018 passed by the learned MACT in MACP No. 5265/16 (Old. MACP No. M-15/13).

2. MAC.APP. 676/2018 impugns the award of compensation on various grounds:-

- i) that the multiplier of 13 has been applied instead of 11. In terms of dicta of the Supreme Court in *Sarla Verma v. Delhi Transport Corporation* (2009) 6 SCC 121, the multiplier of 11 is applicable for a person who is between the age bracket of 51 and 55 years. The deceased was 50 years and 2 months old at the time of accident i.e. he had not yet attained the age of 51. Therefore, the multiplier of 13 was rightly applied. The aforesaid contention is, accordingly, rejected.
- ii) that an amount of Rs. 45,000/- taken as the monthly earnings of the deceased is erroneous because there was no document in support of the said contention. The learned Tribunal has dealt with this issue as under:-

*“16. As already stated above, the claimants are the widow, two sons and one daughter of deceased. PW1 Mohd Suhel @ Sohail (son of deceased) has deposed in his evidence by way of affidavit (Ex. PW1/A) that deceased was aged 47-48 years; he was self employed and was working as Building Material Supplier/retailer as well as Property Dealer on commission basis (in partnership) and was earning Rs. 45,000/- per month at the time of accident. He further deposed that all the petitioners were dependent upon deceased and all the children were unmarried and are still studying and do not have any source of income. He also deposed that deceased was owning and using motorcycle no. DL7SAB-7673, having purchased the same in 2005 after obtaining loan of Rs. 40,000/- from HDFC Bank and the entire loan was repaid by the deceased. He further deposed that deceased was also using mobile phone having three SIM connection numbers. He also deposed that deceased was maintaining Bill Books containing transactions regarding purchase and sale of building material by him during the relevant period. He has relied upon the following documents:-*

| <b>Sr. No.</b> | <b>Description of documents</b>                                                                                            | <b>Remarks</b>           |
|----------------|----------------------------------------------------------------------------------------------------------------------------|--------------------------|
| 1.             | <i>Copy of RC of deceased</i>                                                                                              | <i>Ex. PW1/1</i>         |
| 2.             | <i>Photograph of the shop of deceased alongwith Sign Board</i>                                                             | <i>Ex. PW1/2 (colly)</i> |
| 3.             | <i>Copies of bills of Book of deceased</i>                                                                                 | <i>Ex. PW1/3 (colly)</i> |
| 4.             | <i>Copies of details of household expenses and documents regarding BCA course and receipts of IGNOU of son of deceased</i> | <i>Ex. PW1/4 (colly)</i> |
| 5.             | <i>DAR</i>                                                                                                                 | <i>Ex. PW1/5 (colly)</i> |

17. During his cross examination, he could not produce original ID proofs of remaining petitioners but denied the suggestion that he was the only legal heir of deceased. He deposed that age of deceased was about 47-48 years at the time of accident, since date of birth of deceased is 10.01.63 as mentioned in copy of his DL filed alongwith DAR. He admitted that affidavit dt. 22.11.94 (which is part of DAR) was executed by deceased concerning his siblings namely Mohd Afaq and Ms. Hina Jasmine. He denied the suggestion that he was working for gain at the time of death of his father. He also denied the suggestions that none of the petitioners was dependent upon deceased or that bill books produced on record, were false and fabricated or that letter Ex. PW1/3 was also false or fabricated one. He identified the initial of his father appearing on receipt Ex. PW1/3 but denied the suggestion that signatures of his father appearing in those bills, were not matching with the signatures appearing on the affidavit dt. 22.11.94. He further deposed that deceased was not filing Income Tax Returns. Deceased was maintaining bank account but he could not disclose detail regarding the same. He denied the suggestion that deceased was not maintaining any bank account or that he was not working as Property Dealer either in partnership or individually or that is

*why, no ITR was filed and even copy of Partnership Deed was also not filed on record. He could not say whether deceased was maintaining any Books of Accounts. He denied the suggestion that deceased was not engaged in business of building material.*

*18. During the course of arguments, counsel for petitioners vehemently argued that monthly salary of deceased was not less than Rs. 45,000/-. For this purpose, he heavily relied upon the relevant documents i.e. photographs Ex. PW1/1 and Ex. PW1/2, which depict the Sign Board of "Shoaib Properties & Builders (Regd.)" as also upon statement of account (Ex. PW1/3) containing details regarding purchase of building material and two Bill Books ( Ex. PW1/3 colly) purportedly maintained by deceased with regard to business of building material supplier. He further argued that deceased had got the motorcycle financed from HDFC Bank and the entire loan amount of Rs. 40,000/- was repaid by deceased during his life time, which shows that he was having handsome income from both the aforesaid avocations. He also relied upon the receipt ( Ex. PW1/4) regarding payment of fee of his son Mohd Suhel for BCA Degree Course being pursued from IGNOU. He therefore, urged that said income should be considered in order to calculate the loss of dependency. He further argued that the future prospects @ 25% should also be awarded to the petitioners as the age of deceased was somewhere between 47-48 years at the time of accident. In order to buttress his submissions, he also placed reliance upon "National Insurance Company Ltd. Vs. Pranay Sethi & Ors.", VII (2017) SLT 707, "New India Assurance Company Ltd. Vs. Suminder Kaur", 2011 ACJ 2089 and " New India Assurance Co Ltd. Vs. Saioni Dargan & Ors.", 1990 ACJ 127.*

*19. Per contra, counsel for insurance company vehemently argued that the petitioners have failed to prove the actual monthly income of deceased at the time of accident as they have not led any cogent evidence in this regard during the course of inquiry and thus, his monthly income should be taken as per Minimum Wages Act applicable during the period in*

*question. He further argued that the petitioners have not produced the relevant documents including bank pass book in respect of bank account of deceased as claimed by them, Books of Accounts if any maintained by deceased, etc.*

*20. In order to rebut the aforesaid submissions, counsel for petitioners argued that in the conditions prevalent in our society, large part of population operate in unorganized sector and thus, it is not possible to maintain the Books of Accounts and other relevant record. He also submitted that M.V Act is the beneficial legislation and therefore, the Claims Tribunal should not insist upon for such documents in order to assess the monthly income of deceased.*

*21. As already noted above, the petitioners have relied upon two photographs ( Ex. PW1/1 and Ex. PW1/2) in order to bring home their point that deceased Mohd Abrar was working as Property Dealer as his name appears in the Sign Board of " Shoaib Properties & Builders (Regd.)" depicted in two of those photographs. However, the petitioners cannot be allowed to take any advantage from those photographs for the simple reason that one cannot infer from the aforesaid Sign Board that it actually contains the name of deceased Mohd Abrar or it is some other person having the same name. Further, names of three persons appear in the said Sign Board and it is not clear as to whether deceased was working as Property Dealer in partnership with those two other persons. The entire testimony of PW1 (son of deceased) is totally silent on this aspect. Furthermore, neither the copy of any Partnership Deed has been brought on record nor any documentary proof has been shown in order to establish that deceased was actually working as Property Dealer or was having any income from the said avocation. Apart from the ocular testimony of PW1, no definite or cogent evidence has been led by petitioners during the course of inquiry in order to prove that deceased was actually working as property dealer at the time of accident.*

*22. This brings me down to the next limb of argument raised on behalf of petitioners that deceased was running*

*business of building material. For this purpose, the petitioners have heavily relied upon one Statement of Account (Ex. PW1/3 colly) and the Bill Books ( Ex. PW1/3 colly). 'As rightly argued by counsel for insurance company, the Statement of Account is computer generated sheets, which neither bears the name of deceased nor it is signed by any person. In case one goes by the said statement, it would show that the deceased had earned net profit of Rs. 4,32,000/- in the particular period from 25.11.09 till 21.03.12. It therefore, leads to no definite conclusion as regards the annual income earned by deceased from the said business during the period immediately preceding his date of death. Undisputedly, the Bill Books ( Ex. PW1/3 colly) do not bear signatures of deceased. The carbon copies contained in those Bill Books purportedly bear initials. PW1, who is none-else but son of deceased, did not dare to depose during his chief examination that the said Bill Books were in the handwriting of deceased or were bearing his signatures. It is only during his cross examination, he identified the initial of his father on the receipts which were part of Ex. PW1/3.*

*23. I find considerable force in the argument raised on behalf of insurance company that the said Bill Books ( Ex. PW1/3 colly) even if taken into consideration by this Claims Tribunal, do not help to assess the actual annual income of deceased at the time of accident. PW1 categorically admitted during his cross examination that deceased was not filing any I.T.R during his life time. On the one hand, the petitioners are claiming that monthly income of deceased was not less than Rs. 45,000/- on an average basis but on the other hand, it is being claimed that deceased was not filing I.T.R. It may be noted that accident occurred on 28.02.13 and annual income beyond Rs. 2,00,000/- during the relevant F.Y., was amenable to tax liability as per Income Tax Act. The annual income of deceased, as per claim raised by petitioners, would have been Rs. 5,40,000/- during the period in question and thus, it is difficult to fathom that the deceased was having that much annual income at the time of accident.*

24. It is also pertinent to note that it was not difficult for the petitioners to produce atleast one of the Dealers from whom deceased used to purchase building material. Although, the petitioners have relied upon one receipt purportedly issued by one Joginder Singh but they have failed to produce him during the course of inquiry. Likewise, they have also not examined any person who would have purchased building material from deceased during his life time. They have also not produced Books of Accounts with regard to business of building material being run by deceased as per claim of the petitioners. It is quite unbelievable that a person whose annual turn over runs into lacs of rupees, was not maintaining any Books of Accounts. The copies of cash receipts regarding payments placed on record, are in cash and do not bear the name of deceased therein. One cannot infer from the factum of repayment of loan amount of Rs. 40,000/- by deceased or even from payment of fee for BCA Degree Course of his son by deceased that he would have been earning Rs. 45,000/- per month at the time of accident. Mere bald statement which is not supported by any concrete and definite evidence on record, would not be sufficient to accept the monthly income of deceased to be Rs. 45,000/-. For all these reasons, the judgments relied by counsel for petitioners, are distinguishable on facts and circumstances of the present case, so far as the annual income of deceased is to be assessed in order to calculate the loss of dependency.

25. The petitioners have not filed any document concerning educational qualification of deceased. Hence, it would involve guess work on the part of Claims Tribunal to take notional monthly income of deceased in order to calculate the loss of dependency. Taking into consideration the overall facts and circumstances of the present case in the light of evidence, as discussed hereinabove, the notional monthly income of deceased is taken as Rs. 20,000/- at the time of accident.

26. PW1 has categorically testified that the age of deceased was 47-48 years at the time of accident. However,

*the date of birth of deceased is mentioned as 10.01.63 in copy of his DL filed alongwith DAR (which is Ex. PW1/5 colly). The date of accident is 28.02.13. Accordingly, the age of deceased comes out to somewhere just above 50 years at the time of accident. Hence, the multiplier of 13 would be applicable in view of recent pronouncement made by Constitutional Bench of Apex Court in the case titled as "National Insurance Company Ltd. vs. Pranay Sethi & Ors." (supra).*

*27. The future prospects @ 10% has to be awarded in favour of petitioners (the age of deceased being between 50 to 60 years at the time of accident) in view of recent pronouncement made by Constitutional Bench of Apex Court in the case titled as "National Insurance Company Ltd. vs. Pranay Sethi & Ors.", ( supra) as well as in view of recent decision of Hon'ble Delhi High Court in appeal bearing MAC APP No. 798/2011 titled as "Bajaj Allianz General Insurance Company Ltd. Vs. Pooja & Ors", decided on 02.11.17.*

*28. Considering the fact that there were four dependents at the time of accident, there has to be deduction of one fourth as held in the case of Pranay Sethi mentioned supra. Thus, the total of loss of dependency would come out to Rs. 25,74,000/- (Rs. 20,000 X 3/4 X 110/100 X 12 X 13). Hence, a sum of Rs. 25,74,000/- is awarded under this head in favour of the petitioners."*

3. What emanates from the above is that for taking into consideration a claim of Rs. 45,000/- as monthly earnings, the learned Tribunal has gone into the gamut of documents, as well as ledger books brought on record by the claimant. It particularly, saw the photographs of the shops/offices from where the deceased had carried out his business of supply of building material. It has also taken into consideration the repayment of the deceased's motor-cycle financed by HDFC Bank. Having taken into consideration the various documents, the learned Tribunal assessed and accepted the claim at only 44.44% i.e. Rs. 20,000/- per month i.e. Rs. 2,40,000/- annually, instead

of an amount of Rs. 5,40,000/- which would have been the case if the entire claim of Rs. 45,000/- per month was accepted. The learned Tribunal assessed the claim on material available before it and had rejected 55.56% of the claim. There is no occasion to reduce the said assessment. The appellant's contention is baseless and is rejected.

4. No other grounds are pressed.

5. There is no merit in the appeal. It is, accordingly, dismissed.

6. The statutory amount, alongwith interest accrued thereon, be deposited into the 'AASRA' Fund created by this Court.

7. Apropos MAC.APP. 137/2019, the Court would note that no monies have been granted towards 'loss of love and affection' and only Rs. 40,000/- has been granted towards 'loss of consortium'. There are four claimants. Each of them shall be entitled for 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. v. Nanu Ram Alias Chuhru Ram & Ors.* 2018 SCC OnLine SC 1546. The same is granted to them.

8. Accordingly, the additional amounts payable to the claimants shall be:

| S.No. | Particulars                                               | Amount        |
|-------|-----------------------------------------------------------|---------------|
| 1.    | Loss of love & affection<br>[Rs.50,000/- x 4 (claimants)] | Rs.2,00,000/- |

|       |                                                      |               |
|-------|------------------------------------------------------|---------------|
| 2.    | Loss of Consortium<br>[ Rs. 40,000/-x 4 (Claimants)] | Rs.1,60,000/- |
| TOTAL |                                                      | Rs.3,60,000/- |

9. The awarded amount and the aforesaid amount, alongwith interest @9% from the date of filing of the DAR till its realization, shall be deposited before the learned Tribunal, within three weeks from the 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.

10. MAC.APP. 137/2019 stands disposed-off in the above terms.

**DECEMBER 13, 2019**

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**NAJMI WAZIRI, J**

न्यायमेव जयते