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

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Decided on: 02.09.2019

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MAC.APP. 337/2019

IFFCO TOKIO GENERAL INSURANCE CO LTD Appellant

Through: Mr. Pankaj Gupta, Advocate.

versus

SAVITA & ORS

..... Respondents

Through: Mr. Anshuman Bal, Advocate for R-1
to R-4.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Oral)

MAC.APP. 337/2019 & CM APPL. 10384/2019

1. The award of compensation granted by the learned MACT in MACP No. 92/2016 dated 24.12.2018, has been impugned on the following grounds:-

- i) that the deceased was over 51 years of age, therefore, compensation towards “loss of future prospects” ought to have been 10% and not 25% in terms of the dicta of the Supreme Court in *National Insurance Co. Ltd. v. Pranay Sethi & Ors.* (2017) 16 SCC 680. The Court is of the view that there is merit in the contention, accordingly, compensation towards “loss of future prospects” shall be re-calculated at 10% instead of 25%.
- ii) that the basis of adopting minimum wages applicable in Delhi for an

unskilled worker is erroneous, because the deceased was a resident of Haryana and the accident took place in that State; it is contended that the deceased was not working in Delhi, therefore, minimum wages of Delhi would not be applicable. PW-1-Savita-the widow of the deceased, had stated that her husband was running a milk dairy and earning Rs. 20,000/- per month. However, apart from the said statement, no evidentiary or documentary evidence was brought on record in this regard. The bank account of the deceased is stated to be in Punjab National Bank, Hali Mandi Road, Pataudi, Gurgaon, Haryana. There was nothing to show that he was having a bank account in Delhi for business or otherwise. Accordingly, minimum wages of Haryana i.e. Rs. 5,547/- would be made applicable.

2. The Court notes that there are four claimants, each of whom would be entitled to and are awarded Rs. 40,000/- and Rs. 50,000/- towards compensation for “loss of consortium” and “loss of love and affection” 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.

3. The Award is also impugned on the ground that the married daughter cannot be deemed to be a dependent. Resultantly deduction of 1/3 should be made. The claimants have stated that the daughter was dependent on her father. Deduction of 1/4th was made taking the daughter, son, wife and his father to be dependent. It is not always that a married daughter would not be dependent upon her paternal family support. Just as a married son may, in phases in his life, not have sufficient enough means to support his wife and children and could well be financially supported by his parents. Similarly, a

married daughter too may be helped by her parents when she faces dire financial straits. For a parent, the gender or marital status or age of the child is immaterial, when the latter calls out for help. A parent responds naturally to such a call of its offspring. Insofar as the claimant had stated that the daughter was dependent upon her father, it was for the insurer to disprove the same or bring on record evidence to the contrary. Therefore, their argument in this regard is rejected.

4. The amount payable by the insurer is as follows:

S.No.	Particulars	Amount
1.	Loss of Dependency [Rs. 4,715/- (monthly loss of dependency) x 12 (months) x 11 (multiplier)]	Rs. 6,22,380/-
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. 9,82,380/-

5. The additional amount, alongwith interest at the same rate, as granted hereinabove, shall be deposited 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.

6. Since the appeal has been partially allowed, the statutory deposit of Rs. 25,000/- and interest thereon, and excess amount, if any, shall be returned to the appellant – insurance company.

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

NAJMI WAZIRI, J

SEPTEMBER 02, 2019

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